

Q. Well, concerning this particular shipment that was made July 8th and about which you have testified, on July 8th were you aware of the entries that were being made concerning that shipment?

A. Only in a general way.

Q. Did you know that there was such a shipment on 125 July 8th?

A. I probably knew at the time that there were shipments for Chicago.

Q. That there was a shipment for Chicago?

A. Yes.

Q. Did you know then what the shipment amounted to, what it consisted of?

A. No, sir, not specifically.

Q. In other words, you may have had a record in your office or accessible to you which would disclose that information, is that right?

A. That is right.

Q. But personally you wouldn't know without consulting your records?

A. Of course, the engaging of the transportation would come directly to me. For instance, I would know how many vehicles would be necessary to handle this particular shipment on that particular day.

Q. Is there a traffic manager in your plant in Rochester?

A. Yes, we have several of them.

Q. And do you negotiate the employment of each truck?

A. In this particular instance, I do.

Q. What do you mean, in this particular instance you do?

126 A. In this particular haul from Rochester to Chicago is something that I personally attend to myself.

Q. Well, then, you were personally aware that there was a shipment for Chicago?

A. There was a shipment. We make shipments every day to Chicago, so I would have that knowledge.

Q. What I am trying to find out is whether you had knowledge of this specific shipment or whether you were just drawing a conclusion because there was a shipment every day to Chicago that you knew about this one, too.

A. Well, as I say, I—

Q. Prior to—on July 8th, prior to July 10th, was there anything about this shipment that was unusual?

A. No.



Q. And that made it different from any other shipment?

A. No.

Q. That went out to Chicago. I want to ask you about this film, 116 Kodak film. Is that the same as 116 Verichrome Kodak film?

A. 116 Kodak Verichrome is the proper title.

Q. Is there a 116 Kodak film that is not Verichrome?

A. There could be. I couldn't tell you definitely without referring—I don't believe so; but without referring to those records—those things change from time to time.

127 Q. Well, "Verichrome" means "colored", does it not?

A. That's right.

Q. And you don't believe, then, that they make a black and white 116?

A. They do make black and white, but I say whether or not they have black and white at this particular time, I couldn't tell you, without referring to my records.

Q. Whether they had a black and white at this particular time—you mean July 8th?

A. I mean July 8th.

Q. You mean whether there was any in stock?

A. That's right.

Q. But it is a current item from day to day, day in and day out?

A. Oh, yes, but we run out of film, too.

Q. Well, would you say, then, that your company was out of 116 Kodak film?

A. No, I wouldn't.

Q. Now, without consulting any of these records, do you know whether this shipment contained 116 Kodak film?

A. It contained 116 Verichrome film.

Q. And, without resort to the records, now, at all, do you know whether or not it contained 116 Kodak film?

A. As far as my knowledge, no, it did not contain 128 any Kodak 116.

Q. Now, with regard to the price, the prices about which you have testified, you testified to values, as I understand it?

A. That's right.

Q. Retail values?

A. Yes.

Q. Are you aware of all of the price lists that your company puts down?

A. Yes.

Q. May I see that book that you consulted this morning? Would you show me the page to which you referred?

A. What item are you talking about?

Q. Are they on different pages?

A. Yes.

Q. Well, 116 Kodak film.

A. Kodak Verichrome?

Q. No, "Kodak" is what the indictment says.

A. Well, there is Kodak roll film (indicating).

Q. Well, now, that is the item that you went over with Mr. Callaghan, isn't it? I am not trying to confuse you. That is the \$30 and \$49 retail?

A. That's right.

Mr. Callaghan: That is the Verichrome.

128½ The Witness: It is all Verichrome or Superdex.

Mr. Callaghan: Pardon me, I wasn't addressing my remark to you. I was addressing my associate. I am sorry. By Mr. Walsh:

Q. This is Verichrome. Are they all the same price, black and white, and colored?

A. Not necessarily.

Q. Well, actually?

A. Well, you have the list there; you can tell.

Q. Well, this is a little bit complicated.

A. There is your price of your Verichrome here, and here is Super XX, and here is Kodacolor, and here is Infrared.

Q. What is plain black and white?

A. Right here. That isn't plain black and white. That is Super XX, which is a black and white film. That is the item right here (indicating). Plus X film is another type. That is right there (indicating). They are different type of emulsions. Here is a colored film (indicating).

Q. Well, now, let's take the Kodachrome magazine film, 8 millimeter Kodachrome magazine?

A. \$5.05, right here, 25-foot magazine, daylight type.

129 Mr. Callaghan: We cannot hear you back here. Speak up.

By Mr. Walsh:

Q. Now, is that film colored?

A. No, I think not. No, that is black and white.

Q. Now, is colored film more expensive than this?

A. Generally speaking, yes.

Q. Well, on this particular item, Kodachrome magazine 8 millimeter, that would be more expensive than a Kodachrome.

A. I beg your pardon. This is Kodachrome; therefore it is color.

Q. Now, there are three figures behind. The entire line reads, does it not, "No. 337, 25 foot magazine, daylight type"?

A. Yes.

Q. "Net without tax, \$3.29", is that right?

A. Right.

Q. "Excise tax, 32 cents"?

A. Yes.

Q. "List, including tax, \$5.05"?

A. Yes.

Q. Now, as a matter of fact, that tax is on the retailer when he makes the sale, is that right?

130 A. That is right.

Q. Your company doesn't pay the tax?

A. No, not that tax.

Q. And is that \$3.29 your price to the retailer?

A. No, it is the price to the dealer who sells it at retail.

Q. Well, he is a retailer?

A. Well, if you want to call him that. We don't call him that.

Q. Well, so we will understand each other as we talk about the other items, a man who sells to me, a user, is a retailer, is he not?

A. That's right.

Q. Now, as a matter of fact, that film, when sold, provides that it shall be developed as part of your deal, doesn't it?

A. Some types of film include processing.

Q. Well, that Kodachrome magazine film, if I take my 8 millimeter Kodak movie camera and buy a cartridge to put in it, I mail it back to your company, and you return it to me fully developed, don't you?

A. That's right.

Q. The roll, on a spool?

A. That's right.

131 Q. And that is included in that price, is it not?

A. That's right.

Q. That is included in the price that you testified about on direct examination?

A. Correct.

Q. The \$5.05. And as far as that is included, it is included in the price of \$3.29, as you sent it out?

A. Indirectly, I suppose it would be.

Q. Do you make any charge to your dealer for the development of it?

A. No.

Q. You have calculated that charge in your \$3.29, have you not?

A. I wouldn't know whether that is included in that figure, or not.

Q. Do you have anything to do with making prices of film, determining it?

A. No.

Q. Other than perhaps to show the cost of your department for—

A. No, that wouldn't enter into it at all. The only interest I have is in loading trucks and freight cars as to value, and limiting our value of all of our truckloads, and all of our train loads.

132 Q. Incidentally, this 25-foot magazine daylight type Kodachrome magazine film is on page 4 of this book entitled "Condensed price list, Eastman Kodak Company", is it not?

A. That is page 4, that is right.

Q. What page was the first item you showed me on?

A. The 116?

Q. The 116.

A. The 116 is on page 5.

Mr. Callaghan: Mr. Walsh, may I make a suggestion? May I suggest that we have the document, the entire book, marked as Defendants' Exhibit 1 for identification and we will keep it here—

Mr. Downing: Just a minute, your Honor, as to whether or not they will keep it here. There is a lot of material which is not relevant to this lawsuit in that book.

The Court: I have no objection to it being marked.

(Said document was marked Defendants' Exhibit 1 for identification.)

The Witness: Your Honor, can't we take the sheets involved out of the book, rather than the whole catalog?

133 The Court: Let it be marked at this time, and then maybe we can do that.

By Mr. Walsh:

Q. Show me the 6 millimeter Kodachrome roll film, and mention what page you find it on.

A. What footage are you talking about?

Q. Well, the indictment here says, "Cartons 8 millimeter Kodachrome film," that is all.

Mr. Downing: Your Honor, this man doesn't necessarily have any knowledge of what this indictment showed.

Mr. Walsh: I am trying to describe it for him in the language it was described to us.

The Court: Very well. I think he understands.

The Witness: The price?

Mr. Walsh: Yes, sir.

By The Witness:

A. \$4.10.

By Mr. Walsh:

Q. Does the price vary on the footage?

A. Yes. This is 25-foot roll we are talking about, which is \$4.10.

Q. Now, your page 4 of Defendants' Exhibit No. 1, which is this condensed price list, reads, "Kodachrome 134 No. 369, 25-foot roll, daylight type, net without tax, \$2.70, excise tax 23 cents, list, including tax, \$4.10," does it not?

A. That is right.

Q. Now, can you show me the price in this book of 16 millimeter Kodachrome movie film?

Mr. Downing: If your Honor please, I am going to object. Mr. Callaghan examined him in so far as this type of film is concerned, as well as one of the other three types we previously discussed, and Mr. Callaghan went into that thoroughly.

The Court: Don't duplicate what Mr. Callaghan has asked. Didn't he get these prices on the 16 millimeter?

Mr. Downing: Yes, he did.

Mr. Walsh: Your Honor, I listened to the testimony very carefully, and I am not clear—

The Court: My question is not whether you are clear, but whether or not it is in evidence.

Mr. Walsh: But it may be in evidence, but I am a representative of Mr. MacLeod, and I believe we have a right to confront the witness—

The Court: Yes, but I am not going to have unnecessary repetition. There are four classes.

Mr. Walsh: And this is the fourth class.

135 The Court:—Try not to duplicate Mr. Callaghan's examination, because you are protracting the trial.

By Mr. Walsh:

Q. Have you found the 16 millimeter Kodachrome movie film?

A. Are you talking about commercial?

Q. I am talking about 16 millimeter Kodachrome movie film.

A. You are not telling me what length, so that I can identify it.

Q. Now, look in the third count of the indictment—

Mr. Downing: I submit that if counsel wants to ask him a question, he should ask it.

The Court: He has asked the question. If you are unable to find it from that description, say so.

The Witness: I cannot, from that description.

The Court: Very well. Proceed with something else.

By Mr. Walsh:

Q. Now, I show you a document which has been marked as Government's Exhibit 76 and Government's Exhibit 67, respectively, and I ask you if you can tell me from consulting those two records any more about this 16 millimeter Kodachrome movie film? Can you determine
136 any more particularly by consulting those two records?

A. This record here is a record of Kodachrome commercial millimeter film. That is what you are inquiring about.

The Court: What document are you referring to, Mr. Witness?

The Witness: 76.

The Court: Very well.

By Mr. Walsh:

Q. Now, is Kodachrome commercial mentioned in Government's Exhibit 1 for identification?

A. In there?

Q. Yes, sir.

A. No, it is not. It is not a published price.

The Court: That is not Government's Exhibit 1.

Mr. Walsh: I meant Defendants' Exhibit 1 for identification.

The Court: You said "Government's".

Mr. Walsh: I mentioned Defendants' Exhibit 1.

The Court: All right. It is not in there. Go ahead.
By Mr. Walsh:

Q. Now, where did you obtain this document, Defendants' Exhibit 1 for identification?

A. Well, from my office.

136½ Q. Sir?

A. At my office.

Q. And from whom?

A. The Sales Department keeps me informed as to the prices.

Q. And it is an official record of the Eastman Kodak Company, a publication?

A. That is right.

Q. And it is one on which you rely in transacting the company's business, is that right?

A. Yes, sir, that's right.

Q. Now, did you bring Exhibit No. 67 with you, Government's Exhibit 67?

A. No, I did not.

Q. When did you first see that?

A. Oh, many months ago.

Q. Well, this week?

A. Well, I have a copy of this.

Q. Well, where did you first see that one this week?

A. Yesterday.

Q. In this building?

A. Yes.

Q. It was in the possession of the United States Attorney, or the FBI, I assume, is that right?

137 A. That's right, I don't know which.

Q. You have seen it previously, though?

A. Yes, I have a copy of it.

Q. Now, Government's Exhibit 76, did you bring that?

A. I have a copy of that.

Q. Do you know whose handwriting that is made in?

A. No, I don't. I cannot tell from this particular document.

Q. Is it a record that was made under your supervision?

A. That's right.

Q. Well, isn't there any way of determining who made it?

A. Not from there (indicating).

Q. Could you tell where it was made?

A. It was made in Rochester.

Q. How did you determine that?

A. Well, it is our original packing record, this here (indicating), right on top.

Q. It says "Packing record".

A. And it is packed in Rochester.

Q. In your presence?

A. No.

Q. Now with regard to this commercial film, that is, you testified about some commercial film, I believe, and you stated that that was a special emulsion, is that 138 right, or a special order?

A. A special batch of this particular type of film.

Q. Well, let's go into that. Was that emulsion especially prepared for this particular shipment?

Mr. Downing: Objection, your Honor. This emulsion number or proposition has been thoroughly covered. I submit that anything more on it is repetitious.

The Court: Sustained. This is repetition.

Mr. Walsh: If your Honor please, I would like to state that I am not clear on what happened to the film that came from that emulsion.

The Court: I think that has been gone into thoroughly enough, and I have sustained the objection. You may proceed to something else.

By Mr. Walsh:

Q. With regard to the film, you say it was returned from New York.

Mr. Downing: This is part of the same thing.

The Court: If both of you talk at once, I cannot hear either one of you. Let him finish, and I will hear you.

Mr. Downing: I apologize.

By Mr. Walsh:

139 Q. With regard to the film you talked about that was returned to New York, you told us something about that in direct examination.

Mr. Downing: Well, this is—

The Court: He has not finished his question.

By Mr. Walsh:

Q. (Continuing) Was that film part of this special emulsion?

A. Yes.

Mr. Downing: Your Honor, I object to any further examination on that because it is indirectly getting into the emulsion proposition.

The Court: Well, this question was not asked. The answer may stand.

By Mr. Walsh:

Q. Now, there was some that went to New York City, is that right? I assume when you say "New York", you mean New York City?

A. Well, New Jersey. We speak of it as New York.

Q. New York market?

A. Yes.

Q. Was that to the Eastman Kodak Company?

A. No, to J. E. Brulatour.

Q. And how many other persons received film from 140 the Eastman Kodak Company at Rochester that was made in that particular emulsion?

A. The only two are J. E. Brulatour in New York, and J. E. Brulatour in Chicago.

Q. How about the Eastman Kodak Company here?

A. No.

Q. There wasn't any consigned to the Eastman Kodak Company here?

A. It was consigned to Eastman Kodak as an enclosure with their shipment; it was for J. E. Brulatour.

Q. Then there were just two items that came from that particular emulsion?

A. Two shipments.

Q. Two shipments, rather?

A. That's right.

Q. Now, with regard to this film that went to New Jersey, how much of it went to New Jersey?

Mr. Downing: If your Honor please, I think that has been gone into.

The Court: No, he may answer that, if he knows.

By The Witness:

A. Yes, certainly.

By Mr. Walsh:

Q. Do you know without consulting your record, or 141 if you do know, is it a result of having consulted that record this morning—

By The Court: Oh, let him look at the record and answer. Obviously he doesn't know without consulting the record. If he said he did know, I would doubt his veracity.

Look at the record and answer.

Mr. Walsh: If your Honor please, I think the record ought to show if he is talking about something he knows about.

The Court: The record will show he is looking at his records and answering the question, which is the only way he could do it.

The Witness: Your question was, "How many rolls were shipped to New York"?

Mr. Walsh: To New Jersey.

By The Witness:

A. 111.

By Mr. Walsh:

Q. And they were addressed to J. E. Brulatour?

A. They were shipped directly to Brulatour.

Q. What is the record you used to refresh your recollection?

A. The actual shipping tickets.

142 Q. No, the actual one you just looked at.

A. Well, this is simply a survey which I—

Mr. Walsh: May I see it, your Honor?

The Court: Surely. This is the typewritten summary that you prepared.

The Witness: I prepared it myself from the shipping records, with some kind of form that was intelligible.

By Mr. Walsh:

Q. Sir?

A. I simply put it into some kind of form that was intelligible.

Q. For the purpose of testifying?

A. Yes, sir.

Q. Did you take it from the records of the company?

A. Yes, sir.

Q. Personally?

A. No, I did it myself.

Q. Now, the 111 that went to New Jersey, I am not sure that you completed your answer; at least, I gather the inference that you secure the return of all of that film, is that right?

A. 111 rolls were immediately returned to Rochester because of some defect in the emulsion.

143 Q. Was that at your request?

A. No.

Q. When was it returned to New York?

A. I cannot tell you at the moment. Some time around—

Q. Do you have any record of it?

A. Not here.

Q. How do you know it occurred, then?

A. Because we have records showing that.

Q. That record isn't here in Chicago?

A. I haven't the record here, no.

Q. You haven't produced it here?

A. No.

144 Q. And all of that film was returned. How was that defect in the emulsion discovered?

Mr. Downing: I object, as to how the defect was discovered. It is immaterial.

The Court: Do you mean in the New York shipment?

Mr. Walsh: Yes. If it was defective with regard to this shipment, it was defective—

Mr. Downing: As to whether or not it was defective in this or any other shipment I think is immaterial here.

The Court: It may go to the value.

Mr. Downing: Well, Your Honor—

Mr. Walsh: Yes.

Mr. Downing: I don't know whether it has anything to do with value or otherwise.

The Court: I will let him answer. Overruled.

By Mr. Walsh:

Q. Do you know how it was discovered and what the situation was on it?

A. Probably through the tests made on the shipment, the result of the tests made before the film was shipped, it was probably determined when the film had been released and after they were discovered it was recalled.

145 Q. It was shipped and the defect was discovered and then it was recalled?

A. That is right.

Q. If that emulsion was defective then any film that came from that emulsion was defective, is that right?

A. It is possible. I couldn't tell you definitely.

Q. If the film that went to New Jersey was defective because of the emulsion in which it was prepared, and some film from this same emulsion came to Chicago, both films would be defective for the same reason?

A. Not necessarily. The particular film that went, for example—if you would like me to explain, if the particular film that went to New York had been subjected to some extreme heat that particular lot of film might be defective, whereas the film that came on to Chicago would not be.

Q. Now, let me understand this. Are you shifting your position now or—

Mr. Downing: Just a minute.

By Mr. Walsh:

Q. Or changing it?

Mr. Downing: I resent—I think that should be stricken.

The Court: It may be stricken. Ask a question.

146 By Mr. Walsh:

Q. Are you now telling us, as I understand it, that the film that went to New Jersey was defective because it was subjected to some heat on the way to New Jersey?

A. No, I am not.

Mr. Downing: I think, Your Honor, the answer stands; whatever it is worth, and I think this other question here is irrelevant and improper.

The Court: Are you making an objection to this question?

Mr. Downing: Yes, I am.

The Court: The objection is sustained.

By Mr. Walsh:

Q. Was that film defective because of heat?

Mr. Downing: Objection.

By Mr. Walsh:

Q. Or because of the emulsion?

Mr. Downing: The question has been covered.

The Court: If he knows he may answer it. Do you know?

The Witness: No, I do not.

The Court: Very well. Proceed to something else.

By Mr. Walsh:

147 Q. Do you know what happened to this film when it was returned to the Eastman Kodak Company at Rochester?

A. No.

Q. Was it reprocessed, to your knowledge?

A. I don't know.

Q. Was it received by your department?

A. Yes, sir.

Q. And what did your department do with it?

A. Sent it back to the manufacturing department.

Q. And you have no note or record of what happened to it thereafter?

A. That is right, our concern—

Q. And no knowledge. Then you have no record with you of the receipt of that film and its return?

A. No, I haven't.

Q. You didn't bring that?

A. No.

Q. Were you asked to?

A. No.

Q. Or subpoenaed? What is the difference between this commercial film and an ordinary film, the other three types that you have testified about?

A. I am not in a position to tell you the different characteristics of it. I don't know, except that one is used in professional film and one in the amateur film.

Q. Is it generally more expensive or less expensive than the amateur?

A. They are not comparable in that direction at all.

Q. These four types of film which are listed here in the indictment, 116 Kodak, 8 millimeter Kodachrome roll, 8 millimeter Kodachrome magazine and 16 millimeter Kodachrome movie, of those four which does your company process free as part of its sales contract.

Mr. Downing: If Your Honor please, I think it is all covered in the question of pricing.

Mr. Walsh: Only one—

The Court: He stated one of them was, and he may state whether the other three are or not.

By The Witness:

A. The 8 millimeter Kodachrome roll film, the 8 millimeter Kodachrome magazine film, and the 16 millimeter Kodachrome movie film as listed here are all—processing is included. The 116, the first item, there is no processing involved.

By Mr. Walsh:

Q. And do you have any records with you concerning the cost of that processing?

A. No, I haven't.

149 Q. Do you know whether or not your company, on the return of the film on which it was processed, allows anything for that processing?

A. No, I do not.

Q. Are you acquainted with any sale at any price made in Chicago during the month of July, 1950?

Mr. Downing: I presume the question refers to Kodak film.

Mr. Walsh: Eastman Kodak film, yes.

The Court: You may answer.

The Witness: What is the question again?

By Mr. Walsh:

Q. Are you familiar with the price at which any Kodak film was sold in any particular transaction in Chicago during the month of July?

A. No.

Q. I will call your attention to a document, which I would like to have marked Defendants' Exhibit 2 for identification, and ask you to examine this document and tell me, it purports to be a price list for the Eastman Kodak Company—

(Said document was marked Defendants' Exhibit 2 for identification.)

150 Mr. Downing: If Your Honor please, I think he ought to find out whether he has seen it before.

Mr. Walsh: I am asking him whether it purports to be, that is all.

Mr. Downing: Still we ought to determine whether this man has knowledge of it.

The Court: I think that is a necessary fundamental question.

By Mr. Walsh:

Q. Have you ever seen that document before?

A. No, I haven't.

Q. Have you ever seen one similar to it before?

Mr. Downing: If Your Honor please, similar to it—

By Mr. Walsh:

Q. Or identical with it?

A. No.

Q. Are you familiar with that price list?

A. No.

Q. That is put out by your company?

A. No, I am not.

Q. Prior to my showing it to you, were you aware that such a price list was put out by your company?

A. No. We get out many prices lists. That may
151 be one of a hundred.

Q. I will show you a document identified as Defendants' Exhibit 3 for identification, which is a letter, and ask you if that aids you in any way in identifying this Defendants' Exhibit 2 for identification as a price list of your company?

(Said exhibit was marked Defendants' Exhibit 3 for identification.)

Mr. Downing: I think we ought to determine whether this witness has even seen that exhibit before.

The Court: Yes. You may ask him that, first.

By Mr. Walsh:

Q. Have you ever seen Defendants' Exhibit 3 before?

A. No.

Q. Are you familiar with any circular letter of your company numbered A5-324?

A. No. This is a letter put out by the sales department. I have nothing to do with the sales department.

Q. Defendants' Exhibit 1, this condensed price list which you brought with you, is put out by the sales department, is it not?

A. Indirectly. It is put out by a committee which 152 is made up of sales people as well as other people.

Mr. Walsh: May I have a minute, your Honor?

The Court: You may.

By Mr. Walsh:

Q. Would you take Defendants' Exhibit 1, please, and show me again in that document where No. 369, 25-foot roll of Kodachrome 8 millimeter safety film appears?

Mr. Downing: I object, starting on that all over again.

The Court: Sustained.

Mr. Walsh: I am not starting all over on this document.

The Court: I sustained the objection.

Mr. Walsh: I simply want to compare—

Mr. Downings: Objection.

Mr. Walsh: —that with the price—

The Court: He has never seen it. The objection is overruled.

Mr. Walsh: I think we have a right, Your Honor—I urge Your Honor—

The Court: Finish your cross examination.

Mr. Walsh: —to cross examine on another price extended in Chicago, and whether he knows about it.

153 The Court: Not this witness, when he is not familiar with it.

By Mr. Walsh:

Q. Isn't it a fact that 25 foot roll 8 millimeter film roll was offered to the retail trade in Chicago in July of 1950 at \$3.75 a roll?

A. I am not familiar with that.

Q. I will show you Government Exhibit 66 for identification that bears the inscription, "Kodachrome commercial safety film," and I will ask you if—did you state on direct examination, or you did state on direct examination, did you not, that that carton, that shelf carton, you described it as being—

A. Yes.

Q. —was contained in these big cartons, shipping cartons, 2 to 5 or 65, is that—

A. 2 to 5?

Q. May I identify it as Exhibits 2 to 5?

A. Yes.

Q. Or 65, one of five cartons?

A. Six cartons.

Mr. Downing: The question was based—was asked on the basis of Government Exhibits 2 to 5, or 65.

154 By Mr. Walsh:

Q. It was one of those five cartons?

A. Yes.

(Mr. Downing handed cartons to Mr. Walsh.)

Q. Will you show me this carton, those cartons?

By Mr. Walsh:

Q. When did you first see this Government Exhibit 65 for identification?

A. When did I first see it?

Q. Yes.

A. In connection with this particular case?

Q. Not in connection with any case. Anywhere.

A. I saw this many months ago.

Q. Where?

A. In Detroit.

Q. All right. When did you see it again?

A. Here in this courtroom.

Q. And did it contain any film at any time that you saw it?

A. I don't recall whether there was film in this originally when I saw it or not.

Q. And now you have seen Government Exhibits 2, 3, 4 and 5 before. Do you want to look at them to be sure?

A. No.

155 Q. They are these folded cartons of the same type, I assume. Where did you first see them?

A. I am not sure, but I think I saw them in Detroit.

Q. And did they have film at the time you saw them?

A. Yes.

Q. They had film in them?

A. Yes.

Q. Now, let me look at Government Exhibit 66 and I ask you if by examining this carton without examining any of the marks, such as Government Exhibit 66 for identification, or the initials, you can determine which carton that came from or was in when it was shipped?

A. Of course I can't. I know that it was in one of six cartons.

Q. One of six cartons?

A. Yes.

Q. And how do you determine—I guess you told us about—that is because the emulsion number—

A. Emulsion.

Q. Part of the shipment from that emulsion went to New Jersey, did it not?

A. No. Not part of that. Oh, the part of the emulsion number?

Q. Yes.

156 A. That is true but it was returned.

Q. Does this carton by itself, this shelf carton, show whether it was part of the New Jersey shipment or not?

A. No, but the only film out is this film that was right here in Chicago. This had to be that film.

Q. You have done that by a process of exclusion?

A. That is the only way you could do it.

Q. But you haven't brought us any records on that return, have you?

A. No.

Q. Then there is nothing other than your conclusion that all of the film came back from New Jersey that makes you certain that this package came from one of these cartons that went to Chicago, is that right?

Mr. Downing: I object to the wording of the question. Furthermore, I think the question has been thoroughly asked.

The Court: I think it is argumentative. Sustained.

Mr. Walsh: That is all.

The Court: Redirect examination?

Mr. Downing: Yes, just a few questions, Your Honor.

157

Redirect Examination

By Mr. Downing:

Q. Mr. Mayo, you were questioned with respect to these prices and you have answered a question in cross examination with respect to the basis of your knowledge of the value of this film. Will you explain to the Court and jury in what connection of your duty you used the value and which value you used in your duties?

Mr. Walsh: I object to that.

Mr. Callaghan: It is not market value.

Mr. Downing: I am asking him for the value he uses and the purpose for his using that value.

The Court: In view of the cross examination I think the question is proper. Your objection may be noted.

Mr. Callaghan: May I be heard, Your Honor? He says he predicates a value only on the basis of the shipment, and he does not predicate any value at all upon market value, and that is all we are concerned with here now.

Mr. Downing: I think the witness should be permitted to testify.

Mr. Callaghan: I have concluded my objection.

The Court: Objection overruled.

158 By The Witness:

A. In the process of loading trucks or railroad cars we limit our loading to certain values, which is within our insurance coverage, and that value is based on the list price of the items involved.

By Mr. Downing:

Q. And is that list price you refer to the retail value in the questions I asked you this morning, is that right?

A. Yes, sir.

Mr. Downing: May I have just a moment, Your Honor? That is all.

The Court: Recross examination?

Recross Examination

By Mr. Callaghan:

Q. How much did you recover from the insurance company?

Mr. Downing: I object, Your Honor. That is not proper.

Mr. Callaghan: You opened it up.

The Court: I sustain the objection.

By Mr. Callaghan:

159 Q. In what amount did you file your claim against the insurance company?

Mr. Downing: I object, not proper recross examination.

The Court: Sustained.

By Mr. Callaghan:

Q. You placed this valuation on it to protect yourself for insurance coverage, you testified on redirect examination?

A. Not necessarily to protect ourselves. To keep it within the confines of our coverage.

Q. So that in the event anything happened to that shipment, you would be made whole by the insurance company?

Mr. Downing: I object. It is not part of recross examination.

The Court: Overruled. It goes to valuation.

The Witness: What is your question?

By Mr. Callaghan:

Q. So that in the event of something happening to that shipment you would be made whole by an insurance company?

A. Yes.

Q. Now, you were made whole by the insurance company by a payment to you by the insurance company 160 in the amount of your price that appears in red figures, the prices at which you sell this merchandise to your dealer, were you not?

A. I am not familiar with it.

Mr. Callaghan: That is all.

The Court: Recross examination on behalf of defendant MacLeod?

By Mr. Walsh:

Recross Examination

Q. Do you use these retail prices, these prices to the consumers, that you have testified about for the purposes of evaluating the merchandise for insurance claims, is that what I am to understand?

A. In establishing the value on our loads we use that price.

Q. Including a tax that is never paid?

Mr. Downing: I object, argumentative.

The Court: Sustained.

By Mr. Walsh:

Q. That price includes the tax, does it not?

Mr. Downing: That has all been covered previously.

The Court: Sustained.

161 Mr. Walsh: That is all.

Mr. Downing: That is all.

The Court: That is all. You may step down.

As to this book that has been marked Defendants' Exhibit 1, you will leave that in the custody of the United States Attorney for the time being. The United States Attorney will make it available to the defense counsel for their review over the evening recess, and then whatever parts of it you agree upon are material or for your introduction in evidence, or defense counsel or for any other purpose, you may have photostated and we will accept photostatic copies. If there is any question between counsel for the government and counsel for the defense as to the materiality of any pages, I will resolve that question out of the hearing of the jury in the morning.

Mr. Downing: Thanks.

Mr. Callaghan: Can't we just extract those pages that may be material and let him have the book?

The Court: Let him have it first and then photostat them, instead of pulling them apart. I think that will
162 be better.

Mr. Downing: All right.

The Court: Then following that you can return the book.

Mr. Downing: Return it in toto to Mr. Vayo.

The Court: Yes. Very well. You are excused.

(Witness excused.)

Mr. Downing: Mr. Martin.

(Witness sworn.)

Mr. Walsh: Before we proceed with this witness, I would like to move to strike the testimony of the witness Vayo with regard to retail values.

The Court: Motion is denied. You may proceed.

WILLIAM JAMES MARTIN, called as a witness herein, on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. William James Martin.

Q. M-a-r-t-i-n?

A. Right.

163 Q. In what town do you live?

A. Rochester, New York.

Q. By whom are you employed?

A. Interstate Motor Freight System.

Q. Interstate Motor Freight System, is that the name of your employer?

A. That is right.

Q. And what is the nature of your duties with that company?

A. Driver and loading trucks.

Q. Is that at the terminal in Rochester, New York?

A. Right.

Q. How long have you been employed by the Interstate Motor Freight System?

A. Three years.

Q. I direct your attention to Government Exhibit 67, marked for identification, and ask you to look at that and ask you if you have ever seen it before.

A. Right.

Q. With respect to the signature appearing on the lower right-hand side of the face of that exhibit, I ask you if that is your signature?

A. Right, it is.

Q. And when was that signature affixed thereto?

164 A. 7/8—

Q. Is that July 8, 1950?

A. July 8th.

Q. Where did you affix your signature to that document?

A. Eastman Kodak.

Q. In Rochester, New York?

A. Rochester, New York.

Q. Did you place your signature on there in the regular course of business while you were employed with the Interstate Motor Freight System?

A. Right.

Q. And was it in the regular course of your occupation at that time that you saw it?

A. My duty, right.

Q. In connection with this load represented by Government Exhibit 67, did you have anything to do with the actual loading of it into the trailer?

A. I loaded it into the trailer, right.

Q. At the time the load was loaded, was it a full load?

Mr. Callaghan: That is objectionable; that is a comparative term, what is or what is not a full load.

The Court: Yes. Ask him if he filled the truck.

165 By Mr. Downing:

Q. Did the load fill the truck?

A. No, it didn't fill the truck.

Q. Approximately what portion?

A. About three-quarters of the way.

Q. About three-quarters full?

A. That is right.

Q. Were the cartons placed therein full cartons?

A. Right.

Q. And were those cartons sealed at that time?

A. They were all sealed, right.

Q. After loading the cartons inside the trailer, then what took place?

A. We have to cover the trailer on the back end with paper, waterproof paper, like photo paper, two sheets.

Q. Is that heavy paper?

A. Heavy paper, two sheets.

Q. Then what did you do?

A. We taped the sheets together, tight, so that it will prevent water from getting the merchandise wet, and then from then on we wait for the checker to get his bills in there—the checker has to have his bills. After that—

Mr. Callaghan: I object to what the checker did or has to do, and I move to strike it out.

166 The Court: Yes. Ask another question. That may be stricken.

By Mr. Downing:

Q. What did you do after you put the paper there and sealed it?

A. Draw the load out and have it sealed.

Q. And did you check the load to determine whether or not it was sealed?

A. Yes, sir.

Q. Were there seals on the load at the time, after you have loaded it and before you took it out of the lot?

A. No, we have to take it outside the door and then seal it, outside of Eastman's doors, and then seal it and then we get the bill.

Q. Were the seals affixed thereto?

A. The seals were on before the bill was signed.

Q. At the time you signed Government Exhibit 67, as you have testified, were the seals on that trailer?

A. Yes, sir.

Q. Then what took place after you put your signature on that exhibit?

A. We sign the bills, get the bills, and I draw the load back to the terminal.

Q. Is that the terminal of the Interstate Motor 167 Freight System at Rochester?

A. Right.

Q. Then what took place?

A. I turned the bills over to the despatcher to be billed.

Q. And what did you do with the trailer?

A. Left it in the yard for another driver to pick it up.

Q. Do you know the driver that picked up that particular load on that date?

A. I know him but I can't think offhand of his name.

Q. To refresh your recollection, was it Van Loon?

Mr. Callaghan: I object to that. He said he did not recollect his name. He said he doesn't know his name.

The Court: You may ask the question.

By Mr. Downing:

Q. Do you know, was it Van Loon?

A. Van Loon was the man, right.

Q. And is that the last that you had to do with that trailer on that particular day?

A. That is right.

Q. All of that took place in Rochester, New York on or about July—on July 8, 1950?

168 A. The same day, right.

Mr. Downing: At this time, if Your Honor please, I would like to offer in evidence Government Exhibit 67, and they may cross examine.

The Court: Very well. I will hear any objections after the cross examination. Do you want to start? Your defendant is named first in the indictment?

Mr. Callaghan: I don't want always to be first.

The Court: You may proceed, then.

Mr. Walsh: I don't know how he jockeyed me out of this seat.

Cross Examination

By Mr. Walsh:

Q. With regard to this Mr. Van Loen who picked up the load, did you see him pick it up?

A. I didn't see him take the load out, no.

Q. What do you base that conclusion on?

A. Because he was the only one driver there to take it to Chicago.

Q. And because he left and the load left, you assumed he took it?

169 A. I assumed the load went with him.

Q. Where does this bear your signature, "W. J."?

A. That is right, and the date.

Q. That is your receipt to the Eastman Company?

A. That is right.

Q. For this load?

A. We are responsible for that load after we sign for it.

Q. Who sealed it, who sealed the load?

A. The checker at Eastman sealed it. We don't seal it.

Q. But outside their premises?

A. No, right on their property, outside the door, where the loading platform is.

Q. Maybe I misunderstood, but did you tell us on direct examination that you drew the load outside their gate?

A. Outside of underneath the building—we are in an enclosed building, the trailer is enclosed, and the doors come down, and you have to pull the trailer outside to close the doors. You are not out of Eastman's yards at the time. Eastman's yard is fenced around.

Mr. Walsh: That is all.

Cross Examination

170 By Mr. Callaghan:

Q. Where did you go on July 8th?

A. Where did I go? I came back to the terminal with the load after I left Eastman.

Q. You left the Eastman plant and you went to the terminal of your employer?

A. That is right, the Interstate Motor Freight system.

Q. And you backed your truck up to their dock there and you left it and walked away from it?

A. That is right, Sir.

Q. Then you went home, did you?

A. My duties were done at that time, yes.

Q. When was the next time you picked up a load at Eastman?

A. The first part of the next week, the following week.

Q. A week after July 8th?

A. No. Starting Monday.

Q. When during the week of July 8th had you at any other time been in the Eastman yard in connection with a load?

A. Before or after?

Q. Any time during the week of July 8th?

A. I load there practically all week.

171 Q. Practically every day?

A. Yes, sir.

Q. And do you take loads from the Eastman plant to your dock and then quit, or do you sometimes drive these loads then to their final consignee?

A. Just drive them from the Eastman Kodak park to the dock.

Q. You are not an over-the-road driver?

A. No, sir.

Q. You are a city man?

A. Yes, sir.

Q. That comprises your entire line of occupation, Mr. Martin, is taking of loads from Eastman to your dock?

A. Outside of delivering in the city.

Q. I see. How many loads a day do you take out of Eastman?

A. At times it varies. Sometimes one, sometimes five. I don't always—

Q. Sometimes one, sometimes five, per day?

A. Yes. I don't always get the loads to take out.

Q. How many trucks did you load on the day of July 8th?

A. One.

Q. Was that all you did that day?

A. That is all I had to do that day, right.

172 Q. Was to load one truck and take it to your dock and then go home?

A. Yes.

Q. How long did it take you?

A. The time varies on the load. If they have enough merchandise to fill our load, the trailer—

Q. How many trucks did you load on July 9th?

A. Not any.

Q. How many did you load on the 10th?

A. I can't remember.

Q. How many did you load on the 7th?

A. I don't remember.

Q. Your particular knowledge about July 8th is predicated upon the fact that you have looked at Government Exhibit 67, is that true, Mr. Martin?

A. Not only that, no.

Q. Independently of every other day from July 8th—by the way, you are still at that same job, aren't you?

A. Yes, sir.

Q. Having regard to the fact that every day for several months before July 8th, and now, up until today, May, 1951, you have done the same thing, you are able to say without refreshing your recollection at all, that on July 8th you loaded only one truck?

A. That is right.

173 Q. But you cannot tell us any other particular day that you may select how many trucks you may have loaded, can you?

A. I can tell you why.

Q. Can you or can't you?

A. Not all, no.

Q. Can you select any day other than July 8th and tell me how many trucks you loaded that day?

A. Yes, I can tell you how many I loaded before I came up here.

Q. Yesterday?

A. Not yesterday, no.

Q. How many trucks did you load on May 21st?

A. I have to refresh my memory on that.

Q. Did you have anything to do with the making of this waybill or whatever we may call it here, this bill of lading?

A. No, sir.

Mr. Callaghan: That is all.

Redirect Examination

By Mr. Downing:

Q. Will you explain why you recall this particular shipment on July 8th?

174 Mr. Callaghan: I object to his explanation as to why he recalls. That was a purely voluntary response of the witness and not a response to any question on cross-examination. He volunteered that, the question was not asked him, and I object to the nature of the redirect examination.

The Court: Overruled. You may answer.

By Mr. Downing:

Q. Will you explain why you recall this particular shipment on July 8, 1950?

A. Because it is the only Saturday I have had to load a load at Eastman Park.

Mr. Downing: That is all.

The Witness: That was the day after a holiday which the fellows worked the following week, worked Saturday so that the following week before was a holiday and they had two days off instead of one.

Mr. Downing: That is all.

The Court: Recross examination?

Recross Examination

By Mr. Callaghan:

175 Q. Do you know when this load—

3 The Court: Wait a minute. He is next.

Mr. Callaghan: I beg your pardon.

Recross Examination

By Mr. Walsh:

Q. July 8th was a day after a holiday?

A. No, not July 8th.

Q. Tell us about that.

A. The week before was the 4th of July, right, on a Monday or Tuesday? Well, this was a Saturday, July 8th—

Q. You said the previous week. July 8th was a Saturday, is that right?

A. That is right.

Q. Do you recall that distinctly without consulting anything?

A. Yes. That is the only Saturday I ever loaded a load at Eastman, on a Saturday.

Q. The 4th of July then was within, between Monday and Saturday, wasn't it?

A. The following week was—Saturday was the day we loaded, the week before—before that, or the days before that, the holiday which they had, made a three-day holiday for them instead of a one-day holiday over the 176 week end. Right?

Q. Well—

The Court: Have you any other questions?

Mr. Walsh: I will have to consult my records to answer his question.

Yes, I have.

By Mr. Walsh:

Q. Incidentally, Mr. Callaghan asked you where you went when you left the Eastman Kodak Company with this load.

Mr. Downing: I object.

By Mr. Walsh:

Q. You went to your yard, is that what you told us?

A. The terminal.

Q. The terminal?

A. Yes.

Mr. Downing: I object to the recross examination. I asked no such question on redirect examination.

The Court: Sustained. You are limited to what was asked on redirect examination.

Mr. Walsh: Things have been brought out by—

The Court: One at a time, and you are not the prosecutor here. You are limited on your cross examination 177 to what the prosecutor asked on redirect examination.

He asked one question concerning how he remembered the day he made this load. You are limited to recross examination as to that, and not as to Mr. Callaghan's cross examination but to the government's redirect examination.

Mr. Walsh: I submit, Your Honor, that I should be given leave to ask a few additional questions as cross examination.

The Court: Denied.

Mr. Walsh: That is all.

The Court: Recross examination by Mr. Callaghan?

Mr. Callaghan: That is all, Mr. Martin.

Mr. Downing: That is all.

The Court: That is all.

(Witness excused.)

The Court: Recess for ten minutes.

(Recess taken.)

The Court: Objections, if any, to Government Exhibit 67?

Mr. Callaghan: I would like to make the general and all embracing objection, no sufficient foundation laid for its introduction. This man has testified only to matters of pure hearsay. He knows nothing about how it was made except it looks like it was a document that comes from the Eastman Kodak Company.

The Court: Do you have any objection, Mr. Walsh?

Mr. Walsh: The same objection.

The Court: Very well. Each and all, overruled. Government Exhibit 67 will be received in evidence.

(Said exhibit, so offered and received in evidence, was marked Government Exhibit 67.)

Mr. Walsh: Before we start, we made a general agreement that one objection would stand to both, to each defendant, if it could apply.

The Court: Yes, I think that was made in chambers when we were discussing the matter before we started the trial, but it is not on the record.

Suppose you state it for the record, so it will be there for your protection.

Mr. Walsh: Defendant MacLeod asks the record show that when an objection is made on behalf of the defendant Gordon or on behalf of the defendant MacLeod, if it is applicable to both defendants, that it stand for both defendants.

The Court: Yes. It has been so agreed by counsel, and let the record so show.

180 DR. EARL J. FLICK, called as a witness on behalf the Government herein, having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. State your name, please.

A. Dr. Earl J. Flick.

Q. What town do you live, Dr. Flick?

A. In Huntington Woods. I live in Huntington Woods, Michigan, and practice in Royal Oak, Michigan.

Q. What town?

A. Royal Oak.

Q. Are both of those towns suburbs of Detroit, Michigan?

A. Yes.

Q. How long have you been licensed to practice as a physician and surgeon?

A. Since 1937.

Q. And you practice exclusively in the State of Michigan, do you?

A. I do.

Q. Directing your attention to July and August, 1937, were you acquainted with a person by the name of Schwartz?

181 A. Yes.

Q. Are you acquainted with the type of business Schwartz was in at that time?

A. He was a wholesale jeweler.

Q. Do you recall the location of the jewelry store at that time?

A. In the Metropolitan Building in Detroit.

By The Court:

Q. In where?

A. Detroit, Metropolitan Building.

By Mr. Downing:

Q. That is Detroit, Michigan, is that right, sir?

A. That is right.

Q. I show you Government's Exhibit 66 marked for identification and I ask you to look at it.

Mr. Downing: 66, your Honor.

The Court: Thank you.

By Mr. Downing:

Q. 66, and ask you to look at it, and ask you if you have seen that exhibit before?

A. Yes.

Q. With respect to that exhibit, does it bear your initials?

A. It does.

182 Q. Are those initials E. J. F. appearing on the cover of the document?

A. E. J. F.

Q. On what date were those initials placed thereon?

A. On the date that is here, that is August 28th, 1950.

Q. With respect to that film, from whom did you purchase it?

A. From Mr. Al Schwartz.

Mr. Callaghan: That is objected to. There is no evidence he purchased it from anybody.

The Court: State from whom you got it.

Mr. Downing: Strike that question.

By Mr. Downing:

Q. From where did you get the film contained in Government's Exhibit 66 marked for identification?

A. From Mr. Al Schwartz.

Q. Approximately when did you secure it?

A. In the latter part of July or the first part of August 1950.

Q. How much did you secure from Al Schwartz at that time, how much film?

A. 20 rolls.

183 Mr. Callaghan: That is objected to, if your Honor please, if it is something that occurred outside the presence of these defendants we are not bound.

The Court: Overruled. I am permitting this witness out of order on the Government's representation that they will connect it up with the case. I presume they will do so. If they do not, I am cautioning you of the danger.

Mr. Downing: I understand.

The Court: He may answer.

(Last question read.)

By the Witness:

A. 20 rolls.

By Mr. Downing:

Q. Was that the same type as the type in the exhibit which you have in your hand, Government's Exhibit No. 66?

A. It was all the same.

Q. Do you recall how much that you paid for each of the rolls?

A. \$5 a roll.

Q. What did you do with the quantity of film that you purchased from that individual on that day?

184 A. I took pictures of six rolls. They were sent in to the Eastman Kodak Company and processed and returned to me.

Q. And the balance of the rolls?

A. One roll of it I gave to Mr. Joseph Sullivan to find out whom if he could—

Mr. Callaghan: Wait a minute. I object. This calls for a conversation.

The Court: Yes.

By Mr. Downing:

Q. You just gave it to Mr. Joseph Sullivan?

A. Mr. Joseph Sullivan. The other three—thirteen rolls were given to a Mr. Shearer, an Agent of the FBI. They were all given to Mr. Shearer on the date that is listed on this box.

Q. That is the date with your initials on, August 28, 1950?

A. On each box I initialed and signed the date.

Q. And each of those films were the films that you had obtained at this Schwartz jewelry establishment, is that right?

A. That is right.

Mr. Downing: You may cross examine.

The Court: Who wants to go first time, you?

185 Mr. Walsh: It is his turn.

Mr. Callaghan: It doesn't make any difference.

Cross Examination

By Mr. Callaghan:

Q. Doctor, when is the last time you saw this box that has the initials on it, E. J. F.?

A. I saw it this morning, was the last time.

Q. When prior to this morning?

A. On August 28, 1950, when I gave it to Mr. Shearer.

Q. Is it in the same condition now as it was at the time you gave it to Mr. Shearer?

A. Yes, it is.

Q. How many other cartons did you give Shearer at the same time?

A. 13 in all. The total was 13.

Mr. Callaghan: That is all.

The Court: Do you have any questions, Mr. Walsh?

Mr. Walsh: Yes.

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Cross Examination

By Mr. Walsh:

Q. This film that you used, that you took pictures on you sent that for developing, did you?

A. I did.

Q. And then you gave one to Sullivan and 13 to—

A. Mr. Shearer.

Q. Have you ever bought film of this type before?

A. No, no. This was the first time I had ever seen that type of film.

Q. Did you use it in a movie camera? It is a movie film?

A. It is a movie 16 millimeter Kodachrome film.

Mr. Walsh: That is all.

The Court: Any redirect?

Mr. Callaghan: I overlooked to ask a question. May I, Judge? Would you indulge me?

The Court: You may.

Cross Examination (Ctd.)

By Mr. Callaghan:

Q. This roll, has it been developed?

A. No.

Q. This is a roll you have never used?

187 A. That is a roll I did not use.

Mr. Downing: By "this roll" you are referring to what?

Mr. Callaghan: To Government's Exhibit 66.

By Mr. Callaghan:

Q. That has never been out of the box so far as you know?

A. No.

Q. How many did you send in to the Eastman Kodak?

A. Six rolls.

Q. Six rolls?

A. Yes.

Q. Were they developed by the Eastman Company?

A. They were developed and returned to me.

Q. Did they charge you for them?

A. No. There is no cost of processing.

Q. Do you know what the cost of developing those rolls would have been had you taken them to an independent developer?

Mr. Downing: Objection, your Honor. That is immaterial in so far as this case is concerned.

The Court: Sustained.

By Mr. Callaghan:

Q. Did you ever develop any film such as this, Mr. 188 Witness?

Mr. Downing: Objection, your Honor, as immaterial.

The Court: Did he ever develop it himself?

Mr. Callaghan: Yes.

The Court: What is the materiality?

Mr. Callaghan: Maybe this man is an expert in this field. I want to find out if he is.

The Court: That was not gone into on direct. He was not put on as an expert. I don't think it is proper cross examination, even if he happens to be one.

Mr. Callaghan: All right. That is all.

The Court: Any redirect?

Mr. Downing: Just one question.

Redirect Examination

By Mr. Downing:

Q. Were the other boxes that you turned over at this time, Government's Exhibit 66 marked for identification, of the same type and size as this?

A. Yes.

Q. That is, to Mr. Shearer?

A. Yes, that is right.

189 NICHOLAS KEYES, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. State your name, please.

A. Nicholas Keyes. I live here in Chicago.

190 Q. Are you employed at the present time?

A. No. I am retired.

Q. Will you keep your voice up as strong as possible so that the court—

A. I can't hear very good, either.

Q. Directing your attention to July 10th and 11th, 1950, by whom were you employed on that day?

A. On which date is that?

Q. July 10th and 11th, 1950.

A. I was with the Interstate.

Q. Is that the Interstate Motor Freight System?

A. Yes.

Q. What location? What was the address of where you were working?

A. 1833 South Canal.

Q. 1833 South Canal?

A. Yes.

Q. Just briefly what was the nature of your duties while you were so employed?

A. I was supposed to be the watchman there. I was the watchman.

Q. Approximately from what time until what time were you so employed?

191 A. Well, from sometime in the latter part of June, 1942, until last October I was in the same yard but I worked for a different company. The last three months I was there, soon after that time you speak of I went over with another company.

Q. What was the name of the second company that you worked at the last three months?

A. That was the Interstate Service.

Q. That was the Interstate Service?

A. That was the Interstate Service.

Q. That was the Interstate Service?

A. Yes.

Q. Now, I show you an exhibit which is marked Government's Exhibit 70, marked for identification, and ask you to look at it and ask you if you have ever seen it before?

A. Yes. My name is on here. Yes.

Q. You refer to that as having your name. Is that the signature appearing on the lower line of that document?

A. Yes.

Q. And approximately on what date did you place your signature on that document, on the date the document bears?

A. Yes, that should be, I think, early on Monday 192 morning.

Q. Is that the date that is stamped to the right of your signature?

A. Yes, that is, 11:31, isn't it?

Q. 1:31 a.m. on July 10th?

A. Yes. Let us see. I have to make that out for sure. Well, whatever day was in question.

Q. Did you place your signature at the time?

A. Yes, just as quick as I go he gets a copy back.

Q. By "he" to whom are you referring?

A. The driver that took that order in.

Q. Is that the driver of the truck, that is the same truck and trailer, that is the same?

A. The driver of this here 16—

Q. 1652?

A. 1652.

Q. Now, did you place your signature on there while you were employed and in the regular course of your duties?

A. Yes.

Q. Was it the regular course of your duties with the Interstate Motor Freight System to sign such documents?

A. Yes, sure. I was told, that was what I was told to do, to give them loads out and check them in.

Q. That was a part of your duties usually to check 193 in loads?

A. Yes. There is lots of them down there like that.

Q. At the time that the trailer that is described in that exhibit, at the time the trailer which is described in that exhibit came into the lot, the Interstate Motor Freight System, did you check the trailer?

A. Yes.

Q. Will you describe its condition with respect to the outward appearance of the trailer at that time?

A. If it was otherwise they would have reported it. It must have been in all right condition.

Mr. Callaghan: I move that be stricken out, "all right condition".

The Court: It may be stricken.

By Mr. Downing:

Q. What is your best recollection?

A. My best recollection, them trailers is always in good orders. Everything was all right about them. I go even around the trailer. It has sometimes side doors on it.

Q. Did you check to determine the condition of the seals at the time?

A. Yes. I am supposed to. That was my business to.

Q. What is your best recollection with respect to 194 that trailer with respect to the seals?

A. I know it must have been all right.

Q. After you placed your signature on that document, what did you next do in connection with that trailer after checking it?

A. There is a sheet there on the desk. You have to put down the number of the tractor that hauled it, and the number of the trailer in question and the time he arrived. That is, you have to put the seal time on it.

Q. That is the time stamp on the lower righthand corner?

A. Yes, in this corner. You put it down with the number.

Q. I show you Government Exhibit 17, marked for identification, and ask you to look at that. Just take your time, and ask you if any of your writing appears thereon in connection with your duties.

A. Yes. Yes, here is that trailer, 662 and 1652.

Q. The trailer number is—

A. 1652.

Q. That—

A. Rochester, come in at 1:31, this is right here.

Q. That is, at the same time and the date that is stamped on that exhibit?

A. Yes. That is blurred a little bit, my name and 195 handwriting.

Q. That is your handwriting on the line, is it, sir?

A. Yes. Several of those right near there. There was more trailers there.

Q. Did you affix that writing on that exhibit while you were regularly employed by the Interstate Motor Freight System?

A. That is true.

Q. Was it your regular duty to so do when trailers came in while you were on the tour of duty?

A. On Saturday night and Sunday night I took care of this sheet.

Q. That is this sheet that you have in front of you?

A. Yes. They billed this thing out. I gave him a copy back. It would appear like this, mostly pink copy. Marked it down here so everybody would know what they were doing, what came in, and so forth.

Q. All right. Approximately what time, what time did you go off duty as best you recall?

A. Around seven o'clock that morning.

Q. Thereafter when did you come back to duty?

A. Well, this evening, the same day. That is, I couldn't swear to.

Q. Your best recollection?

196 A. As near as I can recollect I came back at ten o'clock that night. During the week I only work eight hours. On Saturday and Sunday I work longer.

Q. This was the following day, which was what day of the week?

A. That would be Monday, I think.

Q. That is your best recollection?

A. Yes.

Q. Do you have more?

A. No. I would not be in the office only it was Saturday night and Sunday night.

Q. Now, at the time you commenced duty on this Monday night, what did you do with respect to the trailers that were in the lot at that time?

A. Well, I went to look them over the first thing and I saw a lot of white paper outside of one. I went down there. I thought to myself—

Mr. Callaghan: Just a minute, Mr. Witness. You are not permitted to say that.

By Mr. Downing:

Q. Just tell us what you saw.

The Court: That may be stricken.

By The Witness:

A. I looked over this trailer in question there and it 197 appeared as though it was unloaded during the day, when I came back at ten o'clock.

Mr. Callaghan: I move that be stricken.

The Court: It may be.

By Mr. Downing:

Q. What did you see, Mr. Keyes, with respect to the ground surrounding that trailer?

A. Right behind that trailer looked like it was swept away, a lot of white paper on the ground.

Mr. Callaghan: I move it all be stricken except there was some white paper on the ground. That is not objectionable.

The Court: That may stand.

By Mr. Downing:

Q. With respect to the doors of the trailer, did you look at the doors at that time?

A. Yes.

Q. Do you recall the condition of the doors?

A. There was either no seal on it or a broken seal. There was indication it was unloaded.

Mr. Callaghan: I move that be stricken, if your Honor please.

The Court: The question was what?

(Question read.)

198 The Court: The last part may be stricken.

Mr. Downing: After the indication it was unloaded?

The Court: From there on, yes.

By Mr. Downing:

Q. Is that the only thing you had to do with that trailer that you can now recall?

A. Yes.

Q. After that you didn't have anything to do with it?

A. With that one, that is all. I figured I was done with it then.

Mr. Downing: You may cross examine.

Cross Examination

By Mr. Callaghan:

Q. Mr. Keyes, what is your first name?

A. Nicholas.

Q. Nick?

A. Yes, Nicholas.

Q. How many trailers came into that yard that night, do you remember?

A. I don't know. No, I couldn't remember that.

Q. Could you tell by looking at Government's Exhibit 71 how many came in that night?

199 A. I could remember pretty well by looking at this.

Q. Will you do so, please?

A. Yes.

Mr. Downing: Keep your voice up.

Mr. Callaghan: He is counting.

Mr. Downing: Oh, pardon me.

By The Witness:

A. It looks to me like there were only about four trailers, or five trailers came in.

By Mr. Callaghan:

Q. Only four or five?

A. Yes.

Q. Five at the outside?

A. Yes. There is two I received.

Q. How many?

A. That is two. Maybe there was six, and four over there in Chicago, three or four came in.

Q. Four?

A. Yes.

Q. By these four you mean beginning with the word—

A. No, no.

Q. —beginning with the word “Louisville”?

A. Yes.

200 Q. Down to the word “Rochester”?

A. Yes.

Q. Louisville, Rochester—

A. Yes, Erie.

Q. Erie and Rochester?

A. Yes. And then here is two more from Milwaukee.

Q. Two from Milwaukee, four, that would be five trailers?

A. Five loads.

Q. Five loads came in?

A. I think there is no other.

Q. How do you know from looking at this sheet, and by “this sheet” I mean Government’s Exhibit 71, that those trucks came in on July 10?

A. This is one made out, a new one was made out every night.

Q. Because this bears the date July 10, 1950?

A. Yes.

Q. On July 10, 1950, was a Monday, wasn’t it, Mr. Keyes?

A. Yes. We really started off Monday morning. There is very little done on Sunday night.

Q. This sheet does not come into play then until after midnight Sunday?

201 A. It is not supposed to because they made out one for me because they knew I was to be alone. I was supposed to be watchman and take care of that a little bit.

Q. In other words, this sheet, what you are trying to show me, this sheet dated July 10th was in reality made on

Sunday night, July 9th, because you were going to come on duty and it was made for you before you came on?

A. Yes.

Mr. Downing: If your Honor please, I think Mr. Callaghan said inadvertently May. I think he means July.

Mr. Callaghan: If I said May, I mean July. Thank you.

By Mr. Callaghan:

Q. Were you working for anybody else July 10th?

A. No.

Q. Did anybody else use that yard other than the Interstate Motor Freight System?

A. Well, I often see a stray driver in. He may mistake the place, or something.

The Court: I think, Mr. Callaghan, you better stand at the end of the jury box there.

Mr. Callaghan: I want to be here for this part of the examination.

202 The Court: You are through with the papers. I see the jurors on the end can't hear him. If you can hear him, they can't.

Mr. Callaghan: Thank you.

By Mr. Callaghan:

Q. Do you know who the driver of that tractor was?

A. No, all I could know—

Q. Is a number?

A. Yes. I would know who drove them.

Q. Yes. Where did you get that number? From where did you get that number?

A. That number on the tractor?

Q. Yes.

A. It is on all them tractors mostly.

Q. From where did you get that? Did you get it by looking at the tractor?

A. No. It is on the bills. He brings them bills in and trip record.

Q. The driver brings in a trip record?

A. Yes.

Q. The trip record then is a document identified here as Government Exhibit 70, is it, Mr. Keyes?

A. Yes. That is the same thing. Then he gets a copy like that.

203 Q. Do you know who the Kenley Rex Trucking Company is?

A. Yes. They are the ones from Fort Wayne. One of their drivers took in that load.

Q. Is that a different concern than the Interstate Motor Freight Company?

A. Yes. Well, he is a man that has maybe three or four dozen of those trailers, real good trailers to put that stuff in, that Eastman Kodak. He hauls mostly that.

Q. Was that the driver who delivered this load to—

A. No, he would not be Kenley.

Q. I have not finished my question. Was the driver who delivered this load an employee of the Kenley Rex Trucking Company who brought this into your yard?

Mr. Downing: I object unless he knows.

By The Witness:

A. He would be paid by Kenley.

A. Yes.

Q. It is a Kenley driver?

A. Yes.

Q. From Fort Wayne, Indiana?

204 A. Yes.

Mr. Callaghan: I guess that is all.

The Court: Mr. Walsh, any cross examination?

Cross Examination

By Mr. Walsh:

Q. Where was this trailer parked with respect to the office or desk where they kept this Government's Exhibit 71, that is the sheet, showing the truck?

A. What is it?

Q. Do you have a shanty?

205 The Court: The man is hard of hearing. You have to speak loudly.

By The Witness:

A. No. I go right into the main office.

By Mr. Walsh:

Q. You had an office?

A. There is a main office there. You go right in.

Q. That is enclosed—is it?

A. Oh, yes, pretty well enclosed. I had a key to it. Whenever a driver came around with a load, aimed to look the load over first.

Q. Did your duties keep you in your office during the night?

A. On Saturday night and Sunday night, had been going a good little while.

Q. You stayed in the office?

A. No, I go in the office. When I see somebody come along, some fellow come along with a load, he would want to get the trailer marked up on the sheet. I would want to give the slip like that, a small one you have there.

Q. Where did your duties take you the rest of the time?

A. Anywhere I want, like around the place.

Q. Around the yard?

A. Yes.

206 Q. If you were in the office, would you see this trailer where it was parked?

A. Sometimes you could, but not always. You have to go to be sure of your work. Then you would have to be sure the shape it was in, whether it was all right or not.

Q. Well, now, what did this trailer have on it in the way of printing, do you recall?

A. In the way of what?

Q. Printing, words, signs? Did it have any signs on it?

A. Oh, you could tell them trailers, as far as you could see them. You could tell when it said "1652" there. You could tell it was a Kenley trailer when I saw it.

Q. Did it have Kenley on it?

A. Yes.

Q. Printed on it?

A. Mostly all of them is Kenley on them.

Q. It does not have interstate?

A. On the front end, yes.

Q. It does not have interstate?

A. On the front end, yes.

Q. It does not have interstate on it?

A. No, I don't think they have interstate on them.

Q. Were the doors on the sides or in the back?

A. The doors were in the back, all the time in the
207 back, but occasionally there is doors on the side of some trailers.

Q. Were there any doors on the side of this one?

A. I couldn't tell. That is too long. I have not been brought up to know anything like that.

Q. You are retired?

A. What?

Q. You are retired?

A. I don't work for them any more.

Q. Now, when you went up to this—you were off, then, you finished your employment for the night, is that right, and left after you received this trailer?

A. I had to stay there until morning. Somebody else came along. Some of the office force came along.

Q. When was it that you noticed that the trailer was, that this paper was on the floor?

A. That was the next evening, Monday evening. It was the same day.

Q. You went home in the morning?

A. Yes. I went home in the morning.

Q. When your relief arrived?

A. Around seven o'clock.

Q. Then you slept, I assume?

A. Yes.

Q. Then you came back to work?

A. Yes.

208 Q. That was the first time that you noticed that there was paper on the ground, is that right?

A. I figured right away they unloaded the trailer, which they did unload here every Monday, maybe more.

Q. You just assumed it had been unloaded?

A. Yes, that is correct.

Q. You did not look at the doors on the side, if there were any?

A. No. When I saw the seal gone off, it did not look like a loaded trailer. I figured it was an empty trailer and had been empty during the day when the papers were all there.

Q. Was it empty?

A. Well, I couldn't say it was empty, but you see, I took it for an empty trailer.

Q. You paid no more attention to it, then, during your watch that night?

A. No, unless I would look at the tires. Often they will take tires from there.

Q. Did you look at it before you were relieved in the morning before you went home?

A. I looked at it. I had to look at it because I couldn't go by on the limited road. I had to go through without seeing the trailer. I had to look at them all close, especially that one.

209 Q. You looked at them?

A. Yes.

Q. And the seal was on?

A. I looked at the tires on the other trailers, whether

there is any on it or not. That is all I have to look at when they are loaded.

Q. Did you check the doors?

A. I did not check them on that. If there was no seal or there was only a broken seal—

The Court: He is talking about Monday night and you are talking about Sunday. Let us get together.

Mr. Walsh: All right.

By Mr. Walsh:

Q. Monday morning, when you went home—

A. Yes.

Q. —and on your way home—

A. Yes.

Q. —as you left the yard, did you check this trailer before you left and went home?

A. Monday morning?

Q. Yes.

A. Yes, sure. It was loaded that night. The men had just brought it about five hours before that.

Q. When it was brought in, you looked at it?

210 A. Yes.

Q. Did you look at it again before you went home?

A. Yes.

Q. Checked it?

A. Yes. The last thing I do is to look them all over, then give myself time to look at them and to go on in.

Q. Go on in to the office?

A. Check it.

Q. Check it and go home?

A. Yes.

Q. Now, did the trailer stay there that night after you returned, Monday night?

A. Yes.

Q. Was the trailer there that night, all night with you?

A. Yes.

Q. It did not leave while you were on?

A. No.

Q. It was there when you went home that morning?

A. That morning, too.

Q. Yes. When you came back to work again on Tuesday night, was the trailer still there?

A. Well, I don't remember that. They told me, they called me during the day and asked me.

Q. Somebody called you during the day?

211 A. Yes, the Interstate.

Q. You did not look in the yard to see whether it was there?

A. I told them I thought that trailer was empty. I saw the door was open when I came to work Monday night.

Mr. Callaghan: One question I overlooked.

The Court: You may ask.

Cross Examination

By Mr. Callaghan:

Q. When you noticed the paper on the ground in back of this truck, was it Monday evening you noticed the paper?

A. Yes.

Q. Did you report that those seals were broken?

A. I didn't say a word about that because it looked to me like the rest of it was empty.

Q. Mr. Keyes, you did not report to anybody?

A. I did not say anything about it.

Q. Did you look in the trailer?

A. Did I look in the trailer?

Q. Inside.

A. No.

Q. The doors were not open, were they?

A. No, the doors were closed but the seals were broken or gone altogether.

212 Q. You don't know which?

A. Sometimes—

Q. Not sometimes, tell us, Mr. Witness, what in this instance, was the seal missing or was it just broken or do you remember? We can't guess.

A. I can't exactly remember it now. I told them the shape I found it in when I came back at that time.

Q. Which shape it was in, you don't know whether the seal was broken or whether the seal was entirely off the truck?

A. They did not often put them back. Twist them up a little.

Q. How many seals was on that truck when it arrived?

A. Just one.

Q. Just one?

A. Yes.

Q. Where was that seal, on the back door or side door?

A. On the back door.

Q. Wait, please. Was that seal within reach of a person standing on the sidewalk or rather, standing at the back of the truck, the seal that was broken?

A. Yes.

Q. I am not trying to assume it was broken. We still have not got an answer whether it was broken or missing.

You are not sure it was broken or missing?

213 A. Not now, no.

Q. The seal that was supposed to be on the bottom part of that door was either broken or missing?

A. Yes.

Q. There was only one seal on that truck. There were not two seals?

A. No.

. . .

214 MICHAEL PELLEGRINO, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. Michael Pellegrino.

Q. In what town do you live, Mr. Pellegrino?

A. Chicago, Illinois.

Q. What is your business or occupation?

A. Truck driver.

Q. By whom are you employed, sir?

A. Interstate Motor Freight System.

Q. Will you keep your voice up, so the Court and jury can hear you, and counsel here, can hear you, too?

A. Yes.

Q. How long have you been employed by the Interstate Motor Freight System, as best you can recall?

A. About February, 1949.

Q. Were you so employed on July 11, 1950?

A. Yes, I was.

Q. Now, directing your attention to July 11, 1950, did you, in the course of your business, have occasion to see a trailer 1652-K?

A. Yes.

215 Q. Where was it at the time you first saw it?

A. It was parked in the Interstate Motor Freight System lot.

Q. Where is that lot located?

A. 18th and Canal.

Q. What time in the day was it when you first saw it on that day, approximately?

A. About ten minutes after 8:00.

The Court: In the evening or in the morning?

By Mr. Downing:

Q. Was that about ten minutes after 8:00 in the morning?

A. In the morning.

Q. About ten minutes after 8:00 in the morning?

A. Yes.

Q. Will you describe the trailer as you found it at that time and place?

A. Well, I had the freight bill and I noticed the number and I hooked up to it. I walked around and checked the seals like we check on every trailer. I noticed there was no seal on the trailer. I found a lot of white paper on the outside of the trailer on the floor. Well, I went upstairs and I reported it to my dispatcher.

Q. What was his name?

A. Robert McGrath.

216 Q. In connection with this white paper that you saw, did you look at that white paper?

A. Yes.

Q. Can you describe its texture, that is, whether it is heavy or light?

A. Well, it is—it is a smooth finished paper.

Q. I see. With respect to the seals, did you look to determine whether or not there were any seals on the trailer at that time?

A. There was no seals on the trailer.

Q. Do you recall how many doors there were?

A. There was two doors on it.

Q. Where were they? Where were the doors located?

A. There is a side door on the side of the trailer. There was a back door.

Q. All right. After you reported it to your dispatcher, Mr. McGrath, what did you next do then in connection with it?

A. They told me to pull around the front, in front of the terminal. McGrath and Mr. Christofferson, they came down and they told me to open up the doors. We opened

up the doors. It appeared as if there was freight missing.

Mr. Callaghan: I object to that.

By Mr. Downing:

217 Q. What did you see after you opened the doors?

Mr. Callaghan: I move that be stricken, if your Honor please.

The Court: The last part may be stricken. He may answer this question.

By Mr. Downing:

Q. What did you see after you opened the doors? Describe the contents, as you saw it.

A. Well, it was—the way the trailers are usually loaded, they come all the way to the back door. This was not loaded like that. There was an opening.

Q. There was some space between where the cartons on the inside were and the back door?

A. That is right.

Q. Was there any white paper in front of the back door?

A. None at all.

Q. Who was Mr. Christofferson?

A. Our terminal manager at the time.

Q. At that time?

A. Yes.

Q. Thereafter, after looking on the inside of the trailer, then what did you do?

A. The dispatcher told me to take it over to the Eastman Kodak Company and when I got over there Mr.
218 Hawkins, the receiving clerk over there, they had already called him and told him. He took charge of the trailer from there on.

Q. When you reached the Eastman Kodak Company, where was that located at that time?

A. It is located at 18th and Indiana.

Q. Here in Chicago, Illinois?

A. Yes.

Q. Did you turn the load over to Mr. Hawkins, the gentleman you have just referred to?

A. That is right.

The Court: Is that Hawkins?

Mr. Downing: That is Hawkins, H-a-w-k-i-n-s.

By Mr. Downing:

Q. And then what did you do with the trailer after you turned it over to Mr. Hawkins?

A. We drop trailers over there and they unload them.

Q. That is, by "they", you refer to the Eastman Kodak Company?

A. That is right.

Q. Did you get the pro signed, the waybill that you had at that time?

A. That is right.

Q. By whom did you get it signed?

219 Mr. Callaghan: I object. The waybill is the best evidence, if you have it. Let us see.

The Court: He may state who signed it, if anyone did. By The Witness:

A. Hawkins.

By Mr. Downing:

Q. Mr. Hawkins?

A. Signed it, yes.

Q. Directing your attention to Government's Exhibit 68, marked for identification, I ask you to look at it and ask you if you have seen that exhibit before?

A. This is the seal I found in the back of the trailer, on the floor.

Q. In the back of the trailer, is that the trailer to which you have testified?

A. 1652-K.

Q. When did you find that seal?

A. Before we pulled the trailer away because the dispatcher told me to go see.

Mr. Callaghan: I object to what the dispatcher told him. By Mr. Downing:

Q. Don't tell us what the dispatcher told you. When 220 did you find it in relation to when you talked to the dispatcher?

A. When I went back to look for the seal.

Q. Is this the seal you found at that time?

A. This is the seal.

Q. What did you do with the seal after you found it at that time?

A. Turned it over to Mr. McGrath.

Q. He is the dispatcher?

A. That is right.

Q. You did that on the morning before you pulled the trailer over to the Eastman Kodak Company?

A. That is right.

Q. In what condition was the seal at the time you found it?

A. It was broken.

Q. Was it in the same condition except for being flattened out at the present time?

A. That is right.

Mr. Downing: You may cross examine.

Cross Examination

By Mr. Callaghan:

Q. Did you check, make a list of the articles and things that remained in that truck before you took it over to the Eastman Kodak Company?

A. I hadn't—I just took the trailer over to Eastman.

Q. Please, Mr. Witness, answer yes or no. Did you make any check of the contents of the truck before you took it over to the Eastman Kodak Company?

A. How could I make a check? I didn't know what was missing.

Mr. Callaghan: I move that be stricken.

The Court: It may be stricken. The answer is obviously no. Did you or didn't you?

By Mr. Callaghan:

Q. The question is, did you or didn't you make a check of the contents of that truck?

A. No.

Q. Did you make an inventory of what was found in the truck on the morning of July 11th?

By The Court:

Q. Just answer yes or no, whether you did or you did not.

A. No.

By Mr. Callaghan:

A. As I understand it, this is the first morning that truck came to your attention, was the morning of July 11th, is that right?

A. That is right.

222 Q. You haven't any independent recollection of the seal number that was on this truck, have you?

A. (There was no response.)

Q. You shake your head no. You have got to say yes or no, so the court reporter gets it, Mr. Pellegrino?

A. I know the last number is 4.

Q. The last number is 4?

A. Yes.

Q. Except for the fact that there is attached to this seal which has been handed you for identification a story about that seal, you would not now be able to identify it, would you?

A. Oh, yes, I would, because in the afternoon the agents came in.

Q. Wait a minute. Your answer is you would? If he wants any because you can ask him.

The Court: You can examine him on redirect.

Mr. Downing: I appreciate that.

Mr. Callaghan: That is all.

The Court: Mr. Walsh, any questions?

Cross Examination

By Mr. Walsh:

Q. How many seals did you find?

A. I found one.

223 Q. You say you opened the door and it looked there was some space, is that right?

A. That is right.

Q. The truck was not full?

A. That is right.

Q. About three-quarters full?

A. I imagine so.

Mr. Walsh: That is all.

The Court: Redirect?

Redirect Examination

By Mr. Downing:

Q. It is your best estimate at this time to the extent it was full, is that right, sir?

A. That is right.

Mr. Downing: That is all.

Mr. Callaghan: This is not properly recross. May I ask one question?

The Court: Recross? I forgot about recross. What is it you want to ask?

Mr. Callaghan: It is not properly recross. There is a notation I want you to ask about on this Exhibit 67.

Mr. Downing: That is the one that is already in evidence, the bill of lading. I think he should first de-
224 termine whether or not this man knows anything about the exhibit.

The Court: You may ask the question.

Recross Examination

By Mr. Callaghan:

Q. Did you make any stop offs?

A. No.

Q: On your way over to the Eastman Kodak Company to make any delivery, to the Dearborn Chemical Company?

A. No.

Mr. Callaghan: That is all.

The Court: That is all. You may step down.

(The witness was excused).

The Court: We will take a recess at this time until Thursday morning, at 10:00 o'clock a. m.

(Whereupon, at 4:15 o'clock p. m. an adjournment was taken until Thursday, May 31, 1951, at 10:00 o'clock a. m.)

226 The Clerk: No. 50 CR 641, United States vs. Kenneth C. Gordon and Kenneth J. MacLeod.

Mr. Walsh: In connection with the motion previously made here regarding the prejudicial material that appeared in the newspapers, we should like to call your Honor's attention to the article that appeared in the Chicago Daily Tribune yesterday, May 30, 1951, in which the headline states that "Physician Links 2 Defendants To Stolen Film; Bought 20 Rolls from Gang Victim."

Included in the article which pertains to the distortion of Dr. Flick's testimony, there is a statement that, "Swartz was slain in gangland fashion outside his home on May 17, after he had pleaded guilty to possessing some of the stolen film. The Government had expected him to testify in the present trial that he obtained it from the two defendants, Kenneth Gordon, 28, of 515 Roscoe St., and Kenneth MacLeod, 37, of 1150 Lake Shore Dr."

Now, I would like to call your Honor's attention to the fact that the statement as made here as to what the Government expected to prove, and make some inquiry as to the source of these statements.

The Court: What is your motion?

Mr. Walsh: My motion is for a mistrial on the ground that this matter, if it reaches the jury—and they may

have run across it inadvertently—is so prejudicial
227 that we cannot get a fair trial. Further than that,
there is a statement a little different than any we said
so far, that Mr. Downing has been quoted repeatedly in
the papers in other articles that we have filed, and the state-
ment is here that the Government expected Swartz, if he
had lived, to testify against these people.

Now, the source of that information could only come from
the prosecution. That information could only be preju-
dicial to a determination of the issues in this trial, and I
think that some inquiry should be made, or some caution
given to the prosecutor not to indulge in such statements,
and I don't know that he has. I mean, I have had expe-
rience with newspapers being quoted, and sometimes they
draw inferences that are not justified, but I do believe
under any circumstances that the Government should re-
frain from issuing statements, if they have.

The Court: Have you issued any statements to the press?

Mr. Downing: May I make this statement, your Honor?
I have not issued any statements to the press since this
case has gone to trial. Mr. Walsh is not an amateur in
this business, and he has been in the United States Attor-
ney's office. He is well acquainted and is not a babe in
228 the woods, and not naive. He knows I stated in this
court room when there was a motion for increase in
bail, that we had anticipated, and I had asked Judge Igoo
to continue the disposition of the defendant Swartz' case
because of the fact that he was to testify for the Govern-
ment. That is as much as I have ever said to anybody
since that event has taken place.

The Court: You made no statement to the press?

Mr. Downing: I have made no statement.

The Court: The motion is denied.

If you care to write it out, you may file it.

Mr. Walsh: Further than that, I would like to call the
Court's attention, for the record, to a broadcast on Station
WIND radio this morning. I had just woke up, and the
first thing on the radio was a statement by some news-
caster to the effect that the five year old daughter of Mr.
Swartz had died in Detroit, and that although physicians
had placed the cause of her death as respiratory disease,
the police of Detroit and the authorities were going to
make a thorough canvas of the circumstances to determine

whether it was another instance of gangland vengeance.

Swartz was due to testify in the trial of Kenneth McLeod and Kenneth Gordon. There is a completely unrelated situation so far as it can be determined, and I should like to have leave to incorporate a transcript 229 of that broadcast—

The Court: In your written motion?

Mr. Walsh: Yes, your Honor.

The Court: You may do that.

Mr. Walsh: And on that account, I again renew the motion for a mistrial.

The Court: The motion is again denied.

Bring in the jury.

230 Mr. Downing: Mr. McGrath.

— ROBERT MCGRATH, JR., a witness called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. Robert McGrath, Jr.

The Court: Is that Mc or Mac?

The Witness: Mc.

By Mr. Downing:

Q. Where do you live?

A. 737 West 26th Street in Chicago.

Q. By whom are you employed, sir?

A. Interstate Motor Freight System.

Q. How long have you been employed by that company?

A. Approximately ten years.

Q. At the present time what are the nature of your duties?

A. City Dispatcher.

Q. And how long have you held that position?

A. Three years.

Q. Briefly, will you explain to the Court and jury what your duties consist of there?

231 A. You dispatch the units from the terminal to customers, and dispatch units to customers for pick up and delivery service.

Q. I now show you two exhibits which have been identified as government's exhibits 68 and 69.

Mr. Callaghan: If your Honor please, may I interrupt just a moment? Attached to each of these exhibits is a slip which I would like to have your Honor examine before they are shown to the witness. They are pasters or slips, which, without me stating their content, ought to be detached before they are shown any witness. They were shown the witness Pellegrino with those things attached.

Mr. Downing: One was shown.

Mr. Callaghan: All right, one was shown.

The Court: Yes, I think so.

Mr. Downing: May we have a stipulation that no question is to be raised with respect to the contents of that information that is on there. The purpose of that, of course, is well known to both the Court and counsel.

The Court: Yes, but I think for use in a trial—

232 Mr. Downing: I appreciate that, but just so we have no dispute as to it.

The Court: As to having detached it?

Mr. Downing: As to the information that was on there, and with respect to the subsequent testimony concerning the custody of those.

The Court: Well, you will hold both of these tags yourself, and if any question is raised, we can do it then, but certainly since his motion and since I have directed you to withdraw, I cannot conceive of the matter being brought up, though you think it might be.

Mr. Downing: May I have just a moment, your Honor?

The Court: Yes, surely.

By Mr. Downing:

Q. I now show you Government's exhibits 68 and 69, both marked for identification, and ask you to look at them, and I ask you if you have seen them?

A. This one, seal 26894, was given to me by Michael Pellegrino, which is one of my city drivers.

Q. On what date was that given to you?

A. On July 11.

Q. And that bears the—

A. Eastman Kodak sign.

233 Q. That bears the tag Government's Exhibit 68 for identification, is that right, sir?

A. That is correct.

Q. And with respect to the other exhibit, Government's Exhibit 69, have you seen that one before?

A. Yes, 26895, was found by—

Mr. Callaghan: Wait a minute. I object to him testifying as to what somebody else found.

The Court: Yes, sustained.

I think the question is, Have you seen that before?

By Mr. Downing:

Q. Have you seen that before?

A. The last time I did see it was together with Agent Higgs.

The Court: Answer Yes or No.

The Witness: Yes, sir.

The Court: Ask another question.

By Mr. Downing:

Q. When did you first see it, as you best recall?

A. On the morning of June 11.

Q. That was back in 1950?

A. 1950.

Q. Where were you when you first saw that exhibit?

A. In the lot of the Interstate Motor Freight System.

234 Q. Who was with you at that time?

A. Agent Higgs.

Q. Is he an agent of the Federal Bureau of Investigation?

A. Federal Bureau of Investigation.

Q. And whereabouts on the lot? You refer to the lot of the Interstate Motor Freight System?

A. Located at 18th and Canal.

Q. That is right here in the City of Chicago?

A. Yes, sir.

Q. And whereabouts on the lot did you find that particular exhibit?

A. On the east end of the lot, on the south side of the pump.

Mr. Callaghan: If your Honor please, I object to that. He has not said he found it any place on the lot, and the question assumes a fact that is not in evidence.

The Court: Will you read the question?

(The question and answer read.)

The Court: Very good. The question and answer may stand.

By Mr. Downing:

Q. On what date, with respect to Government's

235 Exhibit 68, the one you testified you received from Mr. Pellegrino—what date did you receive that from Mr. Pellegrino?

A. On July 11, 1950.

Q. What time of the day, as best you can recall?

A. Approximately between 8 and 8:30 in the morning.

Q. Now, thereafter, after you had both of those two exhibits, what did you do with them?

A. I kept exhibit 68, which is 26894. I had that one, and when Agent Higgs showed up, I gave it to him.

Q. And what, if anything, happened to the other exhibit, government's exhibit 69?

A. That one Agent Higgs found, and he kept that one. Mr. Callaghan: I move that it be stricken, about Agent Higgs finding that one.

The Court: I will let him ask one more question before I pass on that motion.

By Mr. Downing:

Q. Were you present when Agent Higgs found it?

A. Yes, sir.

The Court: Motion denied.

By Mr. Downing:

Q. As you previously testified?

Mr. Callaghan: I move to strike what he previously testified.

The Court: It may be stricken.

By Mr. Downing:

Q. Are you acquainted in your business with Trailer 1652 in the Interstate Motor Freight System?

A. Yes, sir.

Q. Directing your attention to Trailer 1652, I ask you if you, from your own knowledge, know when that trailer was delivered to the consignee, Eastman Kodak Company?

A. On the morning of July 11, 1950.

Q. By whom, if you know, was that delivered?

A. By one of our city drivers, Michael Pellegrino.

Q. And you recall approximately what time of the morning that was?

A. Somewhere around 8:30 and 9 o'clock—somewhere in there.

Mr. Callaghan: A. M.?

The Witness: A. M., yes, sir.

By Mr. Downing:

Q. Was that on the morning of July 11?

A. Yes, sir.

Q. To your knowledge, as the City Dispatcher of the Interstate Motor System, had that freight been officially opened by an employee of the Interstate Motor Freight System subsequent to its arrival in Chicago, and before the morning of July 11th?

A. No, sir.

Mr. Callaghan: That is objected to, whether it was officially unloaded by anybody. Let's have what happened here, without his conclusion about it.

The Court: The objection is overruled, and the answer stand.

Mr. Downing: You may cross examine.

Cross Examination

By Mr. Callaghan:

Q. What time of day was it when you handed—what was the Agent's name?

A. Higgs.

Q. Higgs?

A. Higgs.

Q. When you handed Mr. Higgs exhibit 69?

A. I imagine around 10 in the morning.

Q. What time was it when you handed him exhibit 68?

A. Well, I gave Mr. Higgs one seal, 26894.

Q. You gave him the one that ended with 4?

238 A. Yes, sir.

Q. What was the time of day?

A. I imagine around 10 o'clock, 10 a. m.

Q. You didn't give him the one that ends in 5, did you?

A. No, sir.

Q. When did you first see the seal known as Government's Exhibit 69, that ends in a 5—without reciting the whole number.

A. Mr. Higgs—

Q. When did you first see it, Mr. McGrath?

A. Around 10 o'clock, shortly after 10 o'clock.

Q. That would be how long after the one with the "64" seal was handed to him?

A. An hour and a half or two hours.

Q. An hour and a half or two hours?

A. Yes, sir.

Q. Was the seal ending in 65 handed you by someone else?

A. 65?

Q. The one ending in 65—was that handed you by someone else?

Mr. Downing: Just for the record, I don't think 239 there is any seal ending with 65, Mr. Callaghan. It is "95."

By Mr. Callaghan:

Q. All right, the one ending in 95. It is Government's exhibit.

The Court: Show him the exhibit now.

By Mr. Callaghan:

Q. Government's Exhibit 69—

The Court: Hand him the exhibit you are asking him about.

By The Witness:

A. 69 was not given to me, no, sir.

Mr. Callaghan: 65, Mr. McGrath?

The Court: He is referring to the exhibit number.

By Mr. Callaghan:

Q. Let me get it straight. The one ending 95—

A. That was not given to me.

Q. It was not given you by some other person?

A. No, sir.

Q. Now, do you know when this trailer 1652 stopped at the Dearborn Chemical Company?

A. No, sir, I do not.

Q. Do you know whether or not it did stop at the Dearborn Chemical Company en route to your dock?

240 A. No, sir, Dearborn Chemical and Eastman Kodak—

Q. Do you know, Mr. Witness, whether it did, or not?

A. Yes, I do know that it did not.

Q. Do you know whether it stopped at the Dearborn Chemical Company between your yard at 18th and Canal, and Eastman Kodak Company, at 17th and Indiana Avenue.

A. No, sir, it did not.

Q. Are you familiar with this bill-of-lading which accompanied this bill-of-lading known as Government's exhibit 67?

A. No, sir, I am not.

Q. Have you ever seen it before?

A. Not this particular ticket, no, sir.

Q. Have you seen a carbon copy thereof?

A. No, sir.

Q. Or a duplicate original thereof?

A. No, sir.

Q. In your course of duties as dispatcher for the Interstate Motor Freight Lines, it is part of your duty, is it not, to dispatch the city drivers after the over-the-road men come in with their trucks?

A. That is correct.

Q. And in order to properly dispatch the city drivers, you must have reference to the bill-of-lading that ac-
241 companies the shipment?

A. No, sir.

Q. And do you, under no circumstances, advert or refer to the bill-of-lading?

A. No, sir.

Q. In connection with your dispatching?

A. No, sir.

Q. To whom does the bill-of-lading go in your establishment when the over-the-road man gets to Chicago?

A. The original copy of the bill-of-lading is mailed directly from Eastman Kodak to Eastman Kodak in Chicago. Our Rochester terminal would be given the shipping order copy of the bill-of-lading, and from that we out the freight bill.

Q. That is handed to the driver, the over-the-road freight man, together with some other bills, the freight bill?

A. Yes, sir.

Mr. Callaghan: That is all.

The Court: Do you have any questions?

Mr. Walsh: Yes, your Honor.

Cross Examination

By Mr. Walsh:

Q. Where did you get this knowledge that no stop
242 is made between your plant and Eastman Kodak?

A. With regard to Dearborn Chemical?

Q. Yes.

A. On Eastman Kodak shipments, the enclosures, of which Dearborn Chemical was one, are loaded in the nose of the trailer, and Eastern Kodak is loaded on the back end, and that is delivered first.

Q. Are you talking now about something you know about this shipment, or about most shipments to Eastern Kodak?

A. That is true in all enclosures.

Q. Incidentally, did your driver, Pellegrino, return to you a receipt from the Eastman Kodak Company for the delivery of the trailer?

A. No, sir, he did not.

Q. Well, did he have any document signed when he arrived there, any document that was returned?

Mr. Downing: Objection, your Honor. This is beyond the scope of direct examination.

The Court: All of it has been thus far. The only thing he testified to on direct was receiving one seal and being present when another one was found. All the rest of this is entirely outside the scope of direct.

Mr. Callaghan: If your Honor please, he also testified that Pellegrino delivered the merchandise to the Eastern Kodak and that is as far as he went.

Mr. Walsh: And he knew it.

The Court: I think the objection is well taken. I sustain it.

Mr. Walsh: May I ask him one question on the statement that he knew it was delivered?

The Court: You may.

By Mr. Walsh:

Q. Were you present when Mr. Pellegrino delivered the truck to the Eastman Company?

A. Was I present at the Eastman? No, sir.

Q. Then your knowledge of it comes from what source?

A. I have another driver that works at Eastman Kodak, and he is the one that actually checks the freight off the trailer.

Q. Yes?

A. Well, Pellegrino would deliver the trailer to him.

Q. Would deliver, or did?

A. Did deliver.

Q. Yes, but you weren't there?

A. No, sir, I was not.

Q. Well, how did you learn it?

A. That the trailer was actually delivered?

244 Q. Yes.

A. Well, prior to the time of delivering the trailer, I called Eastman Kodak and asked them to make a special

check of the trailer upon unloading, and later during the course of the day, through other conversations I talked with Eastman Kodak—

Mr. Walsh: I submit his answer was obviously based on hearsay.

Mr. Downing: I object to that. He asked a question and he got an answer.

The Court: Certainly, it may stand.

Mr. Walsh: Well, I move to strike it because it is all hearsay.

The Court: The motion is denied.

By Mr. Walsh:

Q. Now, will you look at Government's exhibit 70 and tell me whether you ever saw that record?

Mr. Downing: Objection. This is beyond the scope of direct examination.

The Court: What is Government's exhibit 70?

Mr. Walsh: It is a trip record.

The Court: Objection sustained.

Mr. Walsh: This, your Honor, also goes to the 245 question of whether he knows it was delivered, because this refers to a trailer not of the Interstate Trailer System, and it is this Kenley thing, and I wanted to get it—

The Court: The ruling will stand.

Mr. Walsh: I am seeking to find out if he can identify the trailer.

The Court: I understand what you are seeking to do, but I think it goes beyond the scope of the direct examination.

By Mr. Walsh:

Q. Who is the Kenley Rex Truck—

Mr. Downing: Objection.

The Court: I didn't hear the question. You interrupted him in the middle of the question.

By Mr. Walsh:

Q. Who is the Kenley Rex Trucking Company?

Mr. Downing: Objection. It is immaterial insofar as it is improper cross examination.

The Court: It goes beyond the scope of the direct, you mean?

Mr. Downing: That's right.

The Court: Sustained.

Mr. Walsh: There is testimony in the record that
246 the trailer bore the name "Kenley Rex."

The Court: By this witness?

Mr. Walsh: No, by other witnesses, and it is that trailer
I am seeking to know if he delivered it to the place, and I
want to see if he knows what he is talking about.

The Court: I sustained the objection.

Mr. Walsh: That is all.

The Court: Any redirect?

Mr. Downing: No, your Honor.

The Court: That is all. You may step down.
(Witness excused.)

247 V. C. CHRISTOFFERSEN, called as a witness here-
in on behalf of the Government, being first duly
sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. V. C. Christoffersen.

Q. In what town do you live?

A. Oak Park, Illinois.

Q. By whom are you employed, sir?

A. Interstate Motor Freight System.

Q. How long have you been employed by that company?

A. Ten and a half years.

Q. What is the nature of your present duties with that
company?

A. In present duties, I am terminal auditor.

Q. And directing your attention to July 10 and 11, 1950,
were you employed by the Interstate Motor Freight Sys-
tem?

A. Yes, sir.

Q. What were your duties on that day?

A. I was terminal manager at Chicago.

Q. And will you describe to the court and jury what
248 those duties consisted of?

A. I was in complete charge of the Chicago opera-
tions.

Q. And where was your Chicago terminal located at that
time?

A. 1833 South Canal Street.

Q. Here in the City of Chicago?

A. Chicago, Illinois.

Q. Directing your attention to July 10, 1950, do you recall the name of the watchman if any of the Interstate Motor Freight System?

A. Nick Keyes.

Q. What were his hours of duty at that time?

Mr. Callaghan: I submit, if your Honor please, Mr. Keyes has told us all of that. This is simply repetition. Mr. Keyes testified here.

The Court: What do you want to do, corroborate him?

Mr. Downing: Not only that, but I want to go into it just a little bit more, and I think this is a preliminary question to a couple of other questions which I have.

The Court: You may inquire.

By Mr. Downing:

Q. What were his hours of duty at that time on 249 July 10, as best you recall?

A. From 10:00 p.m. until approximately 7:00 a.m.

Q. Now, on that date, on July 10, 1950, what were the regular office hours of the local employees of the Interstate Motor Freight System employed at the terminal there in Chicago?

A. From 7:00 until about 6:00 p.m.

Q. Between the hours of 6:00 p.m. and 10:00 p.m. was there any watchman on duty at the terminal here in Chicago?

A. No, sir.

Q. In connection with your duties both as terminal manager and in your present duties, are you acquainted with the books and records of the Interstate Motor Freight System?

A. Yes.

Q. Directing your attention to Government's Exhibits 70, 71—you might just hold that—72 and 73, I ask you to look at each of those and ask you if you have seen those before.

A. Yes, sir, I have.

Q. With respect to each of those records, are they records of the Interstate Motor Freight System prepared in the regular course of business?

250 A. Yes, sir, they are.

Q. Was it the regular course of business to prepare such records on or about the date each of them was prepared?

A. Yes, sir.

Q. With respect to Government's Exhibits 72 and 73, the top two here, where were those prepared?

A. They were prepared in Rochester, New York.

Q. Will you describe briefly to the court and jury what Government's Exhibits 72 and 73 are, please?

A. They are copies of our freight bills. One is the delivery receipt which is our record of delivery to the consignee of this particular load.

Q. Is that the one that bears the Government's Exhibit 72 stamp on it?

A. 72, right.

Q. All right. And what with respect to Government's Exhibit 73?

A. Exhibit 73 is what we call the consignee's copy of the same freight bill, which is a copy that is left with the consignee after the shipment is delivered to him.

Q. Were Government's Exhibits 72 and 73 received by your Chicago terminal in the regular course of business?

251 A. Yes, sir, they were.

Q. Was it the regular course of business to receive the documents on or about July 10, 1950?

A. That is right.

Q. With respect to Government's Exhibits 72 marked for identification, I ask you if that was in your custody after it was received in the regular course of business until the time you turned it over to the United States District Court in Detroit, Michigan?

A. That is correct.

Q. With respect to Government's Exhibit 70 marked for identification, I ask you if that was received by the Chicago office in the regular course of business?

A. It was.

Q. Was it the regular course of business to receive such documents on or about the date the document bears?

A. Yes, sir.

Q. Will you describe briefly to the court and jury what that document is?

A. This is what we call our trip record, which is made up at the point of origin of the movement of the truck. It travels with the truck to its destination and has several purposes, of identifying the tractor that pulls the load
252 to Chicago or to its final destination, and this copy is our record in our Chicago office. There are other

copies of this that go in to our main office for cost purposes, and also for payment to the drivers that are handling the loads.

Q. And this copy, Government's Exhibit 70, which you have in front of you, is the copy of the Chicago office, is that right, sir?

A. Correct.

Q. I now direct your attention to Government's Exhibit 71 marked for identification and I ask you in what office that document was prepared.

A. That was prepared in our Chicago office.

Q. And was that document prepared under your jurisdiction and supervision in the regular course of business on or about July 10, 1950?

A. Yes, sir, it was.

Q. Was it the regular course of business to so prepare such documents at or about the date that it was prepared?

A. Yes, sir.

Q. Will you describe briefly to the court and jury what that document represents?

Mr. Callaghan: If your Honor please, Mr. Keyes has told us all about that document, what he had to do with 253 it, and how it came into existence. I submit this is purely repetition.

The Court: Overruled. You may answer.

By Mr. Downing:

Q. Will you explain briefly what that document represents?

A. This is what we call our dispatch record. It is a record of the arrival of all trucks at our Chicago terminal, as well as the departure of all our trucks that leave the terminal each day.

Q. With respect to Government's Exhibit 71, which you have there, and Government's Exhibit 70, what relationship if any is there between Government's Exhibits 70 and 71, and the documents known as Government's Exhibits 72 and 73?

A. This Government's Exhibit 70 is the trip record covering the movement of the load shown on Government's Exhibits 72 and 73 from Rochester to Chicago.

Q. What relationship does Government's Exhibit 71—that is the big sheet here—

A. That shows the arrival time and the trailer number

and tractor number there of the load covered by these other documents.

Mr. Downing: You may cross examine.

264

Redirect Examination

By Mr. Downing:

Q. With respect to all the questions that were asked you on cross examination, this trailer that is described in these exhibits as you previously testified, Government's Exhibits 70, 71, 72 and 73; that was received, was it not, at the Chicago terminal of the Interstate Motor Freight 265 System on or about the date and time described in Government's Exhibit 70?

A. Right.

266 Mr. Downing: Mr. Presnell.

WILLIAM PRESNELL, called as a witness herein on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. William Presnell.

Q. In what town do you live?

A. Maywood, Illinois.

Q. By whom are you employed, sir?

A. Interstate Motor Freight System.

Q. How long have you been employed by that company?

A. Sixteen years.

Q. Where are you presently employed?

A. Terminal manager, Chicago.

Q. How long have you been so employed?

A. Since October 1, 1950.

Q. Did you follow, in the tour of your present duties, Mr. Christoffersen?

A. Yes, sir.

267 Q. As terminal manager at the Chicago office of the Interstate Motor Freight System are you acquainted with the records of the Chicago office of the Interstate Motor Freight System?

A. I am.

Q. I direct your attention to Government's Exhibits 70, 71 and 73, each marked for identification, and ask you

to look at those records and state if you have seen them before.

A. I have.

Q. With respect to each of those records, are they records of the Chicago office of the Interstate Motor Freight System?

A. They are.

Q. Are these records maintained under your control and supervision?

A. Yes, sir.

Q. And have they been under your control and supervision since you have been terminal manager until they were turned over to the District Attorney's office?

A. Yes, sir.

Mr. Downing: At this time, if your Honor please, the Government would like to offer in evidence Government's Exhibits 70, 71 and 73.

They may cross examine.

The Court: Do you desire to cross examine?

Mr. Callaghan: I have no cross examination of this witness.

The Court: Do you have any, Mr. Walsh?

Mr. Walsh: No, sir.

The Court: That is all. You may step down.

(Witness excused.)

The Court: Objections, if any, to Government's Exhibits 70, 71, 72 and 73.

Mr. Callaghan: He did not offer 72.

Mr. Downing: I did not offer 72 at this time, your Honor, 70, 71 and 73.

The Court: Very well. Those three.

Mr. Callaghan: If your Honor will hold this exhibit in your hand, I won't have to make any objection other than to say I do object to it because of the label which appears thereon.

The Court: And is it on the basis of that label that you object?

Mr. Callaghan: Made by some person under circumstances which have not been testified to, or identified here. It constitutes written evidence which ought to be given orally from the witness stand in this court and not be permitted to go to the jury in that shape.

The Court: Any other objections?

Mr. Callaghan: That is the principal basis of objection.

The Court: Do you have any objection to this exhibit, Mr. Walsh? Have you seen it?

Mr. Walsh: I haven't seen it, but I will adopt Mr. Callaghan's objection.

The Court: I will rule on that now. We might as well finish one at a time. I mean, if you have any in addition to the ones he voiced, because by our agreement they stand for both.

Mr. Callaghan: The stampings in the upper righthand corner I assume will be obliterated.

The Court: What are they?

Mr. Callaghan: The stampings in the upper righthand corner.

Mr. Downing: So far as they do not obliterate what is on that document, I have no objection.

The Court: Yes. I think you can by heavy crayon obliterate that stamping.

Mr. Callaghan: Yes.

The Court: And that does not in any way--

270 Mr. Downing: I appreciate that, your Honor.

The Court: --detract from the exhibit. Objection to Government's Exhibit 73 is overruled. The same will be received in evidence.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 73.)

The Court: Objection, if any, to Government's Exhibits 70 and 71.

Mr. Callaghan: I submit that so far as Government's Exhibit 70 is concerned, no proper foundation has been laid for its introduction, it being handled by the truck driver in this case and bearing notations of that truck driver, and I submit it is not properly identified here for admission in evidence.

The Court: The objections are overruled. Government's Exhibit 70 will be received in evidence.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 70.)

The Court: What is the other one?

Mr. Callaghan: My only objection to that document, Government's Exhibit 71, is that we are concerned
271 only with one entry on that document, and I see no

sense in confusing this record and encumbering this record with a lot of documents there. The only entry admissible here is the one testified to by Mr. Keyes concerning that one shipment.

Mr. Downing: I might just add this: Mr. Callaghan, if your Honor recalls, went to great length in cross examination to find out how many were received while Mr. Keyes was on duty, and Mr. Keyes and Mr. Callaghan referred to four or five other items.

Mr. Callaghan: Mr. Keyes said there were four or five others.

Mr. Downing: As to the attachment on the sheet, I do not object to it being removed. As to the balance of Government's Exhibit 71, the face of it—except for that cross examination on the part of Mr. Callaghan, I would normally agree, but I think in the light of his cross examination it is perfectly proper.

The Court: You are removing the second sheet, are you?

Mr. Downing: The second sheet, I do not object to its removal.

272 The Court: Then take that off, or do you want it?

Mr. Walsh: If this is going in, I think the other ought to go in as far as it pertains to this trip, or to this particular load.

The Court: I imagine the jury can read it as well as counsel, and find out which one pertains to what they are considering, and which does not. You think the whole thing ought to go in if any goes in, do you, Mr. Walsh?

Mr. Walsh: Yes.

Mr. Callaghan: I agree with that, that if you let any of it in, let the whole business go in.

The Court: Yes, all right.

Mr. Callaghan: But if you let anything in more than the one having to do with this entry I see no point in that.

Mr. Downing: They can't have their cake and eat it.

The Court: All right. The whole thing is received in evidence.

(Said exhibit so offered and received in evidence, was marked Government's Exhibit 71.)

The Court: We will take our morning recess.

274 THOMAS H. HAWKEN, a witness, called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Downing:

Q. Will you state your name, please?

A. Thomas H. Hawken.

Q. In what town do you live?

A. At Oak Forest.

Q. In Illinois?

A. Yes, sir.

Q. By whom are you employed, Sir?

A. Eastman Kodak Company.

Q. And how long have you been employed by the Eastman Kodak Company?

A. 31 years.

275 Q. What are the nature of your duties?

A. I am supervisor of receiving of the stock and placement of stock.

Q. And are your employment and your duties performed here in Chicago, in the Chicago branch here in Chicago, Illinois?

A. Yes, sir.

Q. What is the address of the company here in Chicago?

A. 1727 Indiana Avenue.

Q. And were you so employed on July 11, 1950?

A. Yes, sir.

Q. And in connection with your duties, are you acquainted with the receiving records of the Eastman Kodak Company?

A. Yes, sir.

Q. I now show you a document, which is identified as Government Exhibit 72, for identification, and ask you to look at it and ask you if you have ever seen it before?

A. Yes, sir, I have.

Q. Does your handwriting appear on that document?

A. Yes, sir, in the pencil mark.

Q. All the pencil markings thereon, were they placed thereon by you?

276 A. Yes, sir.

Q. And approximately on what date was your writing placed thereon?

A. On July 11.

Q. That was last year, 1950?

A. That is right, in 1950.

Q. Where were you when you placed that writing thereon?

A. At my desk in the receiving department.

Q. And did you place that writing thereon in the regular course of your duties.

A. Yes, sir.

Q. Now, directing your attention to the writing, "494," what does that represent?

A. That is 494 cases, or cases or cartons, received on that trailer.

Q. And you have reference to the trailer that is numbered on that document?

A. That is right, 1652.

Q. Did you make the actual count yourself of the number of cases received?

A. Yes, sir.

Q. And was it in the regular course of your business to so count and make notations on documents similar to this?

277 A. Yes, sir, it was.

Q. And with respect to Government Exhibit 73, I will ask you if that—Government Exhibit 73 in evidence—I will ask you if that is a carbon copy of 72?

A. Yes, sir, that is a carbon copy of the original freight bill.

Q. And with respect to Government Exhibit 73 in evidence, was that written by you for the files of the Eastman Kodak Company?

A. Yes, sir, it was.

Q. What, if anything, did you do with Government Exhibit 72 after it was signed by you?

A. That was given to the driver to take back to Interstate.

Q. At the time the trailer described in Government Exhibit 72 came to the Eastman Kodak Company in Chicago, did you inspect the trailer?

A. Yes, sir, I did. That is in the course of my business.

Q. And after making that inspection, did you then make the notation that is written on the right-hand side of Government Exhibit 72?

A. Yes, sir, in regards to the seals.

Q. And were there any seals on the trailer at that 278 time, Sir?

A. No, sir.

Q. Now, in connection with the trailer which you have had identified as the number on Government Exhibits 72 and 73, were you present when that trailer was unloaded?

A. Yes, sir, I was.

Q. And did you make a record of the contents of the trailer at that time?

A. Yes, sir, I did.

Q. Directing your attention to Government Exhibits 74, 75, 76 and 77, each marked for identification, I ask you to look at those and ask you if you have seen those before?

A. Yes, sir, I have.

Q. With respect to Government Exhibits 74, 75 and 77, by whom were those three exhibits prepared?

A. By myself.

Q. Are they in your handwriting?

A. That is the three, I did.

Q. And what date did you prepare those records?

A. On November 11th.

Q. On what date?

A. November 11th.

Q. Is that the date that appears, on or about the 279 date that appears?

A. About that date or maybe the day before, when we received the consignment from Rochester.

Q. Was that on the date that you see there?

A. Prior to that, Sir.

Q. The date that is stamped on Government exhibit—

A. That is July 11th.

Q. July 11th instead of November 11th, you mean July 11th?

A. If I said November, I am sorry. I mean July 11. I am sorry.

Q. That is when you prepared these three exhibits?

A. That is right.

Q. In connection with what event did you prepare those three exhibits?

A. For our working process of unloading trailers.

Q. And was that in connection with the unloading of trailer 1652?

A. Unloading trailer 1652.

Q. Now, with respect to the other exhibit in that group of exhibits, Exhibit 76, I will ask you, was that exhibit received by you in the regular course of your duties?

A. Yes, sir, it is.

280 Q. Was it the regular course of your duties to receive such documents?

A. That is right.

Q. Was that document in your possession at the time that the trailer 1652 was unloaded?

A. Yes, sir.

Q. Now, at the time you checked in the contents of trailer 1652, did you have knowledge of the quantity, of the type of film to be included in that load?

A. Yes, sir.

Q. And did you receive that knowledge in the regular course of your duties?

A. Yes, sir.

Q. At the time—

Mr. Callaghan: That calls for a conclusion, I submit, if Your Honor please. He should be required to tell how he received that knowledge. It may be pure hearsay.

The Court: The answer may stand.

By Mr. Downing:

Q. At the time you checked in the contents of trailer 1652, were you able to determine the quantity of the goods not received on that shipment by the Eastman Kodak Company at Chicago?

281 A. Yes, sir.

Q. Did you make the list of the type and number of cartons not received?

A. I did, Sir.

Q. With respect to Government Exhibit 74—

A. Yes, sir.

Q. I ask you if that is the list of cartons not received in the said shipment?

Mr. Callaghan: I object.

Mr. Walsh: I object to that.

Mr. Callaghan: It is assuming a negative here. He may prove or testify what was received.

The Court: Well, the other document is the list that was supposed to show what was received.

Mr. Downing: Yes, the other document represents what was received. This is a tabulation.

The Court: His conclusion will be stricken.

Objection sustained.